



City of Newburgh Council Work Session
sesión de trabajo del consejo

September 4, 2014

6:00 p.m.

AGENDA

1. Presentations / Presentaciones:

- a. Certificates of Recognition will be presented to City of Newburgh Auxiliary Police Officers; (Councilwoman Holmes) / Certificados de Reconocimiento se presentarán a la Ciudad de Newburgh Oficiales de la Policía Auxiliaria; (Concejera Holmes)
- b. Two (2) new Auxiliary Police will be sworn in at the Sept. 8 meeting. / *Dos (2) nuevos Policías Auxiliarios se prestarán para juramento en la reunión del 08 de septiembre.*
- c. Certificate of Recognition will be presented to Records Director, Elizabeth McKean for her time of service with the City of Newburgh. / *Certificado de reconocimiento será presentado a la Director de Documentos, Elizabeth McKean por su tiempo de servicio en la ciudad de Newburgh.*
- d. Presentation from the Vet2Vet Program with Everett Cox (tentative) / *Presentación del Programa de Vet2Vet con Everett Cox (provisional)*
- e. Presentation from the Department of Social Services Programs Q & A with Scott Imhoff. / *Presentación del Departamento de Servicios Sociales Q & A con Scott Imhoff.*
- f. Proclamation of Hispanic Heritage Month- Sept. 15- Oct. 15 / *Proclamación del mes de la Herencia Hispana 15 de septiembre – 15 de octubre*

2. Economic and Community Development & Real Estate / Desarrollo económico y comunitario / bienes raíces:

- a. *Resolution No. 216-2014: Authorizing the extension of time to close title on the property located at 288 Grand St. sold as private sale to Gregory Nato and authorizing the City Manager to execute a pre-closing license agreement. / la prórroga del plazo para cerrar el título en la propiedad ubicada en 288 Grand St. vende como venta privada a Gregory Nato y autorizar el gerente de la Ciudad para ejecutar un contrato de licencia pre-cierre.*
- b. *Resolution No. 217-2014: Approving the City of Newburgh's amended Community Development Block Grant Action Plan for Fiscal Year 2014 in the amount of \$48,484.00 / Aprobar la modificación del Community Development Block Grant plan de acción para el Año Fiscal 2014 en la cantidad de \$ 48,484.00*
- c. *Resolution No. 218-2014: Newburgh Community Land Bank request for 151 Liberty St. to acquire along with adjoining property of 96 Broadway. / petición del*

Newburgh Community Land Bank para la propiedad 151 Liberty St. la cual esta adyacente de 96 Broadway.

3. Grants/Contracts and Agreements / Becas / Contratos y Convenios

- a. *Resolution No. 219-2014: Authorizing the City Manager to enter into an agreement with Swagit Productions, LLC to provide services in connection with live streaming broadcasts of City Council meetings and work sessions via the internet. / Autorizar al Gerente de la Ciudad entrar en un acuerdo con Swagit Productions, LLC para ofrecer servicios en relación con las transmisiones en vivo de las sesiones del Consejo de la ciudad y sesiones de trabajo a través de Internet.*
- b. *Resolution No. 220-2014: Authorizing the City Manager to accept an Americans with Disabilities Act-Compliant Swing from Unitex for Use in a City Park or Playground. / Autorizar al Gerente de la Ciudad a aceptar un columpio cual adhiere a la ley federal Estadounidenses con Discapacidades-Compliant de Unitex para uso en un parque de la ciudad.*
- c. *Resolution No. 221-2014: Authorizing the City Manager to apply for and accept if awarded a grant in the amount of \$25,000.00 from the New York State Department of Environmental Conservation under the 2013-2014 Urban and Community Forestry Grand Round 12 Award Number T305108. / Autorizar al Gerente de la Ciudad para solicitar y aceptar si se le adjudica una beca en la cantidad de \$25,000.00 del Departamento de Conservación Ambiental del Estado de Nueva York bajo el 2013-2014 Urbana y Forestal Comunitario Gran Premio Ronda 12 Número T305108.*
- d. *Resolution No. 222-201: Authorizing the City Manager and the Police Chief to enter into a letter of agreement with the New York State Office of the Attorney General Memorializing the City of Newburgh Police Department's Policies, Procedures and Training Protocols to ensure meaningful access to police services by individuals of limited English proficiency. / Autorizar al Gerente de la Ciudad y el jefe de la policía a entrar en una carta de acuerdo con la Oficina del Fiscal General en memoria de la Ciudad de Newburgh Polías, Procedimientos y Protocolos de Entrenamiento del Departamento de Policía de Newburgh Estado de Nueva York para asegurar un acceso significativo a servicios de policía por parte de individuos de una habilidad limitada en Inglés.*

4. Engineering / Ingeniería:

- a. *Resolution No. 223-2014: Authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for Asbestos Abatement Design Services for the Greenhouse Demolition Project at Downing Park at a cost of \$5,800.00. / Autorizar al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con Quality Environmental Solutions & Technologies, Inc. (QUES&T) para servicios de eliminacion de asbestos con el Diseño*

para el Proyecto de Demolición de efecto invernadero en Downing Park a un costo de \$5,800.00.

- b. Resolution No. 224-2014: Authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for Professional Services related to sampling of suspected asbestos containing material for the Police Department. / Autorizar al Gerente Municipal a aceptar una propuesta y ejecutar un acuerdo con Quality Environmental Solutions & Technologies, Inc. (QUES&T) para servicios profesionales relacionados con el muestreo de material que contiene asbesto sospechado en el Departamento de Policía.*
- c. Resolution No. 225-2014: Authorizing the City Manager to accept a proposal and execute an agreement with McLaren Engineering Group for Inspection and Design Services related to repairing and rehabilitating the Route 32/Metal Arch Culvert Bridge also known as the Lake Street Bridge at a cost of \$133,328.00. / Autorizar al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con McLaren Engineering Group para inspección y servicios de diseño relacionados con la reparación y rehabilitación del puente de la ruta 32 / Metal Arch Alcantarilla también conocido como el puente de la calle Lake con un costo de \$ 133,328.00.*
- d. Resolution No. 226-2014: Authorizing the City Manager to execute a license agreement with CSX Transportation, Inc. to allow the City and its Contractors access to CSX Property for the purpose of repairing the Combined Sewer Overflow Outfall No. 12. / Autorizar al Gerente de la Ciudad para ejecutar un contrato de licencia con CSX Transportation, Inc. para permitir que la Ciudad y sus contratistas el acceso a CSX propiedad con el fin de reparar el sistema combinado de alcantarilla emisario N^o 12.*
- e. Resolution No. 227-2014: Amending Resolution No. 247-2013, the 2014 Budget for the City of Newburgh, New York to transfer \$95,898.00 from Special Items-Contingency to Sanitary Sewer – Other Services to provide necessary funding in connection with collapsed sewer lines. / modificar resolución No. 247-2013 para transferir \$ 95,898.00 de Artículos- Especial de Contingencia para Alcantarillado Sanitario - Otros Servicios para proporcionar los fondos necesarios en relación con las líneas de drenaje colapsadas .*
- f. Resolution No. 228-2014: Authorizing the City Manager to enter into an agreement for Professional Engineering Design and Construction services with Maser Consulting, PA in connection with the rehabilitation of the Basketball Courts located in the Delano-Hitch Recreation Park. / Autorizar al Gerente de la Ciudad para entrar en un acuerdo para servicios profesionales de diseño de ingeniería y servicios de construcción con Maser Consulting, PA en relación con la rehabilitación de las canchas de baloncesto ubicadas en el Parque Recreativo Delano-Hitch.*

4. Finance / Finanzas:

- a. *Resolution No. 229-2014: Supporting a four year cyclical reassessment plan and authorizing the City Manager and City Assessor to apply for and accept if awarded aid for cyclical assessments from the New York State Department of Taxation and Finance Office of Real Property Tax Services. / Apoyo a un plan de re-evaluación cíclica de cuatro años y autorizar al Administrador de la Ciudad y la Asesor de la Ciudad para solicitar y aceptar si las ayudas concedidas para las evaluaciones cíclicas del Departamento de Estado de Nueva York de Impuestos y Finanzas de Bienes de Propiedad Servicios de Impuestos.*

5. Discussion / Discusión:

- a. *Resolution No. 230-2014: to express concerns about transporting crude oil by rail, barge and ship and calling upon Federal and New York State Agencies to protect the public by Enacting stringent rules and regulations for such transport and to urge and encourage the exploration of alternative means for the transportation and distribution of crude oil. / para expresar preocupaciones sobre el transporte de crudo por ferrocarril, barcas y buques y exhortando a agencias federales y del estado de Nueva York para proteger al público mediante la promulgación de normas y reglamentos estrictos para este tipo de transporte y exhortar y alentar la exploración de medios alternativos para el transporte y distribución de petróleo crudo.*
- b. *Local Law No adding Chapter 276 of the Code of Ordinances of the City of Newburgh Entitled "Tobacco" and enacting Article 1 Entitled "Tobacco Retail License". / Ley Local No añadiendo Capítulo 276 del Código de Ordenanzas de la Ciudad de Newburgh, titulado "Tabaco" y la promulgación del artículo 1, titulado "Tabaco de licencia de venta al público".*
- c. *Online Stopwatch / Cronómetro electrónico*
- d. *Request for Resolution Condemning the Persecution of Falun Gong (Mayor Kennedy) / solicitud de resolución que condena la Persecución a Falun Gong (Alcaldeza Kennedy)*

6. Executive Session / Sesión Ejecutiva:

- a. *Pending Litigation / Litigios pendientes*

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

**A RESOLUTION AUTHORIZING THE
EXTENSION OF TIME TO CLOSE TITLE ON THE PROPERTY
LOCATED AT 288 GRAND STREET (SECTION 10, BLOCK 2, LOT 26)
SOLD AT PRIVATE SALE TO GREGORY NATO AND AUTHORIZING
THE CITY MANAGER TO EXECUTE A PRE-CLOSING LICENSE AGREEMENT**

WHEREAS, this Council, by Resolution No.: 114-2014 of April 28, 2014, approved the sale of 288 Grand Street, being more accurately described as Section 10, Block 2, Lot 26 on the official tax map of the City of Newburgh, to Gregory Nato, and further authorized the execution of a deed to the purchaser at Private Sale; and

WHEREAS, the City Manager has granted the sixty (60) day allotted extension to close title on said premises on or before August 31, 2014; and

WHEREAS, due to unforeseen circumstances, specifically outstanding title issues which have now been resolved, the purchaser has requested additional time to close title; and

WHEREAS, the purchaser has requested access to the property prior to the closing to commence the rehabilitation of the property and such access requires a license agreement; and

WHEREAS, this Council has determined that granting the requested extension and license agreement would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that an extension of time to close title on 288 Grand Street (Section 10, Block 2, Lot 26) be and is hereby granted until September 30, 2014, that date being thirty (30) days from the date previously granted by the City Manager; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Gregory Nato for pre-closing access to 288 Grand Street.

LICENSE AGREEMENT

This Agreement, made this _____ day of _____, two thousand and fourteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and GREGORY NATO, an individual having an address of _____, _____, as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor, on behalf of himself and his employees, agents and contractors, known as 288 Grand Street, and more accurately described as Section 10, Block 2, Lot 26, on the official tax map of the City of Newburgh.

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 288 Grand Street, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary; for the purposes of and to perform certain tasks on said property owned by Licensor, including but not limited to cleaning, excavating, filling, boring, testing, sampling, restoration, construction and any and all other work appurtenant thereto.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: During the term of this Agreement, the parties mutually agree to release and indemnify each other for all claims, damages or expenses resulting from said party's own negligence. It is hereby acknowledged that Licensor is a self-insured municipality.

Fourth: Licensee may perform environmental testing or demolition work, including walk-through inspection, review of City of Newburgh and other records, review of governmental environmental records and data, and other measures relating to underground tanks, potential contamination issues, demolition of structures and related tasks. In the contract by which Licensee retains consultants and contractors to perform

such work, they shall name City as additional insured under insurance coverage concerning the performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the earlier of the closing of title as set forth in the Terms and Conditions of Sale or the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other; that the occupancy shall be a license only and in no way create a landlord-tenant relationship; and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Michael G. Ciaravino, City Manager
Per Resolution No. -2014 of September 8, 2014

LICENSEE

By:

Gregory Nato

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION APPROVING THE CITY OF NEWBURGH'S AMENDED COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN FOR FISCAL YEAR 2014 IN THE AMOUNT OF \$48,484.00

WHEREAS, the City of Newburgh has prepared a five-year Consolidated Housing and Community Development Strategy and Plan in accordance with the planning requirements of the Cranston-Gonzalez National Affordable Housing Act; and

WHEREAS, this Consolidated Plan was prepared in accordance with all statutory requirements, including those related to citizen participation; and

WHEREAS, this plan was submitted to and approved by the U.S. Department of Housing and Urban Development; and

WHEREAS, the City has submitted a one-year Action Plan in order to implement various elements of the strategies identified in its Consolidated Plan during the second year it is in effect; and

WHEREAS, the U.S. Department of Housing and Urban Development has increased the allocation by \$48,484.00 and such increase requires an amendment; and

WHEREAS, the City of Newburgh would certify that it would be adversely affected by the loss of the reallocation amounts of Community Development Block Grant funds from the New York-Jersey - White Plains, NY-NJ Metropolitan Division; and

WHEREAS, the funding provided by the amended budget will permit the implementation of a sewer lateral connection repair assistance program targeted at properties located within census tracts 4 and 5; and

WHEREAS, the program will provide partial funding assistance for work performed within the public right-of-way to replace sewer service laterals and priority will be given to properties that pose the greatest risk to public health and safety; and

WHEREAS, this change in planned activities is considered a "substantial amendment" and will be made public by postings and public notices in the newspaper and on the City website,

and the City will receive and consider comments for 7 days prior to implementing the amendment; and

WHEREAS, this one-year Action Plan contains the following amended activities and budget for the City's 2014 Community Development Block Grant Entitlement Program;

<u>2014 Amended Budget</u>	
Sewer Lateral Connection Assistance Pilot Program	\$48,484.00

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York does hereby approve the Amended Action Plan and associated budget; and

BE IT FURTHER RESOLVED, that the City Manager be and is hereby designated the official representative of the City of Newburgh and is hereby authorized to sign the one-year Action Plan contract, and he is further directed and authorized to act in connection with the submission of a one-year Action Plan and to provide such additional information as may be required.

Land Bank

151 Liberty St

Acquire 151 Liberty Street, city owned property behind 96 Broadway. Vacant lot with no buildings. Propose to convert property to a green infrastructure use. Grant funding to remove the existing black top and create a well landscaped, well designed storm water-friendly open space that could simultaneously provide parking for nearby development if necessary, and outside cafe space for the restaurant on top of facilitating the necessary venting that would exceed the lot line of 96 Broadway.

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH SWAGIT PRODUCTIONS, LLC
TO PROVIDE SERVICES IN CONNECTION WITH LIVE STREAMING BROADCASTS
OF CITY COUNCIL MEETINGS AND WORK SESSIONS VIA THE INTERNET**

WHEREAS, the City of Newburgh wishes to have its City Council meetings and work sessions broadcast live via the internet; and

WHEREAS, the City of Newburgh issued a Request for Proposals for video streaming services in connection with the live streaming broadcasts; and

WHEREAS, two proposals were received and reviewed; and

WHEREAS, Swagit Productions, LLC submitted the most desirable proposal as well as the lowest cost; and

WHEREAS, Swagit Productions, LLC will provide services in connection with the installation of broadcast and video streaming hardware and equipment in the third floor Council Chambers for the purposes of live streaming broadcasts of City Council meetings and work sessions via the internet, as well as on-demand and live streaming video services, indexing and remote production for up to fifty (50) meetings per year; and

WHEREAS, the total cost for the installation of the equipment and hardware shall not exceed \$25,584.00, which has been allocated under the 2013 BAN under budget code H1.1010.0205.8101.2013; and

WHEREAS, the monthly cost for services of on-demand hosting, live streaming video, indexing, remote production and switching shall be \$1,350.00 per month for up to fifty (5) meetings per year, and although not expected, \$285.00 per meeting for any meeting in excess of fifty (50); and

WHEREAS, such monthly funding costs have been allocated under the 2014 Budget under budget line A.1680.0491; and

WHEREAS, this Council has reviewed the attached agreement with Swagit Productions, LLC and has determined that entering into the same is in the best interests of the City of Newburgh and its further growth and development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and is hereby authorized to enter into an agreement with Swagit Productions, LLC to provide services in connection with live streaming broadcasts of City Council meetings and work sessions via the internet.

**AGREEMENT FOR
VIDEO STREAMING SERVICES**

**CITY OF NEWBURGH
and
SWAGIT PRODUCTIONS, LLC**

This Agreement for Video Streaming Services ("Agreement") is made by and between the City of Newburgh, New York ("City"), a municipal corporation with offices at 83 Broadway, Newburgh, New York 12550, and Swagit Productions, LLC, ("Provider") a Texas Limited Liability Company, with offices at 850 Central Parkway E., Suite 100, Plano, Texas 75074 effective as of the date written below.

RECITALS

- A. The City desires to enter into this Agreement in order to obtain video streaming services for scheduled Council meetings as outlined in the Scope of Services attached as Exhibit "A"; and
- B. Provider has available and offers to provide the personnel necessary to provide said services in accordance with the Scope of Services included in this Agreement (see Exhibit A attached hereto and incorporated herein); and
- C. Provider is in the business of providing video streaming services for businesses and governmental entities, and represents and warrants that it has the skills, qualifications, expertise and experience necessary to perform the work and services to provide and implement video streaming services as described herein in an efficient, cost-effective manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for other buyers; and
- D. On the basis of and in reliance upon such representations by Provider and others made herein and in Provider's proposal, the City desires to engage Provider to provide the work and services described herein under the terms and conditions of this Agreement.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following work and services for the City:

1.1 Provider agrees to provide the work and services as set forth in the Scope of Services.

1.2 Without limiting the foregoing provisions of Section 1.1, the services to be provided by Provider include the installation ("Installation") by Provider of all hardware, software, cameras, wiring, and related equipment and materials identified and described in the Scope of Services (collectively, the "Equipment") within the City of Newburgh City Council chambers located at Newburgh City Hall, 83 Broadway, Newburgh, New York 12550 (the "Site"). Before installing the same, Provider shall deliver to the City, for review and consideration of approval, drawings or plans and specifications for such Installation. The City's approval of any Installation or related plans does not and shall not constitute a representation or warranty by the City that the Installation or related plans comply with any specifications therefor or with any applicable governmental laws, rules, codes, standards, or regulations.

2. COMPENSATION OF PROVIDER

2.1 Provider agrees to provide all of the services and Equipment set forth in the Scope of Services and as described herein for the following amounts:

(a) A one-time charge not to exceed:

(i) **Four Thousand Nine Hundred Thirty-Five and No/100 Dollars** (\$4,935.00) for Swagit EASE hardware/software and other related (including, without limitation, Installation) costs (as identified and detailed on the attached Exhibit "A", page 3, "Streaming Video Hardware"); and

(ii) **Twenty Thousand Six Hundred Forty-Seven and No/100 Dollars** (\$20,647.00) for broadcast system hardware/software and other related (including, without limitation, Installation) costs (as identified and detailed on the attached Exhibit "A", page 5, "Cosmos Broadcast System"); and

(b) Following the Installation at the Site of all Equipment by Provider and the acceptance thereof by the City, the City shall pay to provider a monthly fee in the amount of **One Thousand Three Hundred Fifty and No/100 Dollars** (\$1,350.00) for on-demand, live video streaming and remote switching (as identified and described on the attached Exhibit "A", page 3, "Streaming Video Monthly Managed Services").

2.2 (a) Payment for the work, services, and Equipment described in Section 2.1(a)(i) and 2.1(a)(ii), above, shall be due and payable following the completion of the Installation of the Equipment by Provider, the acceptance thereof by the Director, and the receipt by the City of an invoice from Provider for such work, service and Equipment; provided, however that with respect to the work, service and Equipment described in Section 2.1(a)(ii), fifty percent (50%) of the not-to-exceed amount set forth therein (or

\$10,323.50) shall be due and payable not later than Fifteen (15) days following the date Agreement has been signed by both parties.

- (b) Payment balance for the work, services, and Equipment described in Section 2.1(a)(ii) shall be due and payable following the completion of the Installation of the Equipment by Provider and the acceptance thereof by the Director.
- (c) Except as set forth herein, payments will be processed on a monthly basis, unless annual billing has been requested, with payment available within 30 days after receipt of an invoice for the previous month's service. All payments pursuant to this Agreement shall be made promptly and without undue delay, and in no circumstance beyond 60 days from the due date.
- (d) Should the City fail to pay any invoice that is outstanding more than 60 days, a 5% service fee will be applied to the total amount of that invoice, not including any shipping or sales tax.

3. RIGHTS, OBLIGATIONS AND REPRESENTATIONS OF PROVIDER

- 3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. Further, nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the manner in which Provider performs the work and services, which are the subject matter of this Agreement. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.
- 3.2 Provider's Control of Work. All services to be provided by Provider shall be performed in accordance with the Scope of Services. Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel. Provider warrants and represents that all Equipment and other goods and materials provided by Provider shall be safe, fully operational, and will not cause injury or damage to any person or property, and that all persons provided by Provider to perform the work and services under this Agreement shall be adequately trained and capable of performing the work and services.
- 3.3 Reports to the City. Although Provider is responsible for control and supervision of work and services performed under this Agreement, the work and services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of

inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services.

- 3.4 Compliance with All Laws. Provider shall comply with all applicable laws, statutes, ordinances, rules, regulations, standards, codes, and executive orders of the federal, state and local government, which may affect the performance of this Agreement.
- 3.5 Organization and Authorization. Provider warrants and represents that: (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and which shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of Provider; (v) has the right and authority to sell the hardware and software to the City; (vi) all hardware and software shall be in good working order; and, (vii) all licenses and warranties regarding the software and hardware shall be conveyed to the City.
- 3.6 No Conflict. Provider warrants and represents that the execution and delivery of this Agreement and ancillary agreements hereto by Provider does and will not: (i) conflict with, or result in any violation or breach of, any provision of Provider's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which Provider is a party; or (iii) conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to Provider.
- 3.7 Camera and Broadcast Operations. Although Provider is responsible for control and supervision of work and services performed under this Agreement, the City understands that the operation of the camera and broadcast system can be done remotely. Such remote operation requires access via inbound TCP port 2001, outbound TCP ports 21, 80, 443, 1935, 5721, and outbound UDP ports 53, 123. The City will need to supply the Provider with access to such TCP and UDP ports with respect to the City's Internet connection. If, such access is not given or the City's Internet connection fails during operations, the Provider will not be held responsible for remote camera operations. Additionally, in the event the Provider decides to operate such system manually, the City shall provide access to the equipment (as identified and described in the Scope of Services, page 5, "Cosmos Broadcast System") at the Site described in Section 1.2, above.
- 3.8 Warranty. Provider warrants that: (i) any streaming server hardware provided by Swagit not in good working order and used under normal operating conditions, will be fully replaced for a period of three (3) years; (ii) thereafter, all costs of streaming server hardware replacement due to any failure or caused by normal wear and tear, shall be at the City's expense; (iii) all operating and proprietary software for any streaming server shall be fully replaced or upgraded, at no cost to the City, for the

life of the contract; and, (iv) all hardware and software for the broadcasting equipment (as identified and described in the Scope of Services, page 5, "*Cosmos Broadcast System*"), shall be replaced or fixed with respect to each components manufacturer's warranties.

- 3.9 Provider's Service Network. Provider's content delivery network and service level represents that: (i) it maintains full N+1 redundancy on all service critical-infrastructure in order to protect against outages. Multiple mirror facilities provide diverse geographic redundancy. Within each facility servers have multiple power supplies, network interfaces and RAID protected storage. Provider is connected to upstream bandwidth providers by multiple gigabit uplinks, transitioning to gigabit and ten-gigabit connections to multiple "tier 1" bandwidth providers, offering route diversity and redundancy. These bandwidth providers maintain 24/7 staffs familiar with mitigating Denial of Service attacks, should the need arise, which they have sufficient capacity to absorb-and-filter; (ii) Provider utilizes external, 3rd party monitoring services to track server availability metrics. This service tracks availability from approximately 30 international points which helps isolate regional networking issues, in addition to any centralized failures; (iii) Content is stored on Provider's networks and viewable to the public for a period of three years or as defined by the managed services. All content is stored and backed-up offline indefinitely during the service term. Content can also be stored locally on the City's network for an indefinite period of time limited only by storage capacity, with the added benefit of cached delivery to local users. City is consulted before they exceed any storage horizon and may extend the window for additional years; (iv) Content is stored in widely accessible formats and is available for export at any time. Exported data will include multimedia content and associated documents in their native format as well as any structured metadata in XML format. Access to exported content can be via FTP, but in such an event the City is encouraged to provide a portable hard drive to ease the transition of storage and bandwidth intensive content; and (v) the City may verify compliance with these policies at any time in consultation with Provider engineers and officers.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and (i) sent by certified or registered mail, return receipt requested, postage prepaid, (ii) delivered personally, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight; and addresses for such notice are as follows:

To the City's Authorized Representative:

Glenn Kurcon
Information Systems Manager
City of Newburgh
83 Broadway
Newburgh, NY 12550
845/569-7324

To Provider:

David Owusu
Director of Streaming
Swagit Productions, LLC
850 Central Parkway E., Ste 100
Plano, Texas 75074
800/573-3160

Notice shall be deemed given upon receipt by the party to whom it is sent.

5. INDEMNIFICATION

PROVIDER'S INDEMNITY OBLIGATION. PROVIDER COVENANTS, AGREES TO, AND SHALL DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO THE CITY), INDEMNIFY, AND HOLD HARMLESS THE CITY OF NEWBURGH, NEW YORK AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY OF NEWBURGH, NEW YORK, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE CITY OF NEWBURGH, NEW YORK, AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY OF NEWBURGH, NEW YORK EACH BEING A "NEWBURGH PERSON" AND COLLECTIVELY THE "NEWBURGH PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE CITY OF NEWBURGH, NEW YORK AND/OR ANY OTHER NEWBURGH PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (I) ANY OF THE WORK AND SERVICES OF THE PROVIDER AS DESCRIBED IN SECTION 1 OF THIS AGREEMENT, (II) ANY REPRESENTATIONS AND/OR WARRANTIES BY PROVIDER UNDER THIS AGREEMENT, AND/OR (III) ANY ACT OR OMISSION UNDER, IN PERFORMANCE OF, OR IN CONNECTION WITH THIS AGREEMENT BY PROVIDER, OR BY ANY OF PROVIDER'S OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, TENANTS, SUBTENANTS, LICENSEE, SUBLICENSEE, CONCESSIONAIRES, OR ANY OTHER PERSON OR ENTITY FOR WHOM PROVIDER IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, PROVIDERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY NEWBURGH PERSON, OR CONDUCT BY ANY NEWBURGH PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

PROVIDER SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY NEWBURGH PERSON RELATED TO OR ARISING OUT OF PROVIDER'S ACTIVITIES UNDER THIS AGREEMENT AND

SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT PROVIDER'S SOLE COST AND EXPENSE. THE NEWBURGH PERSONS SHALL HAVE THE RIGHT, AT THE NEWBURGH PERSONS' OPTION AND OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING PROVIDER OF ANY OF ITS OBLIGATIONS HEREUNDER. THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATIONS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

6. INSURANCE

Provider and its subcontractors shall procure and maintain in a company or companies lawfully authorized to do business in New York and until all of their obligations have been discharged and satisfied (and including during any warranty periods under this Agreement), insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the services and work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the services and work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional

(This coverage must be amended to provide for an each-project aggregate limit of insurance)

2. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000

3. Professional Liability \$1,000,000

(This coverage must be maintained for at least two (2) years after the project is completed; if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term of this Agreement)

B. OTHER INSURANCE REQUIREMENTS: The foregoing insurance policies shall be endorsed to contain the following provisions:

1. The City of Newburgh, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to general liability, including liability arising out of activities performed by, or on behalf of, the Provider; products and completed operations of the Provider, and automobiles owned, leased, hired or borrowed by the Provider.
2. The Provider's insurance shall contain broad form contractual liability coverage.
3. The City of Newburgh, its, officers, officials, agents, employees and volunteers shall be additional named insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.
4. The Provider's insurance coverage shall be primary insurance with respect to the City, its, officers, officials, agents, and employees (and must be endorsed to read as primary coverage regardless of the application of other insurance). Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.
5. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
7. The policies shall contain a waiver of subrogation in favor of the City, its officers, officials, agents, and employees.
8. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the City of Newburgh.

9. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Newburgh, New York of any material change in the insurance coverage.

10. Provider may maintain reasonable and customary deductibles, subject to approval of the City.

11. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of New York.

6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled, or not renewed, except after sixty (60) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:

Glenn Kurcon
Information Systems Manager
City of Newburgh
83 Broadway
Newburgh, NY 12550

6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of New York and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency. All insurance must be written on forms filed with and approved by the New York Department of Insurance.

6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement (and update the same as needed to comply with this Agreement). The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

Certificates of Insurance shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the City of Newburgh.

All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Glenn Kurcon, Information Systems Manager, City of Newburgh, 83 Broadway, Newburgh, NY 12550**. The City reserves the right to request and receive within ten (10) days, complete copies of all insurance policies (certified to be true and correct by the insurance carrier) required by this Agreement at any time. The City shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insureds under its policies or Provider shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements and all provisions identified above.

6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City's risk manager, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

7. DEFAULT AND TERMINATION

Events of Default Defined. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the City;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;

- 7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;
- 7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;
- 7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;
- 7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and
- 7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies. The following shall be remedies under this agreement.

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies:

- 7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;
- 7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;
- 7.2.1.3 The right to monetary damages;
- 7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;
- 7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and
- 7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.3 Right to Offset. Any excess costs incurred by the City in the event of termination of this Agreement for default, or in the event the City exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

8. GENERAL PROVISIONS

8.1 Headings. The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Governing Law and Venue. This Agreement shall be governed by and administered and interpreted under the laws of the State of New York, without regard to any conflict of laws provisions. Venue for any action, cause or action or proceeding under this Agreement lies exclusively in the State District Court of Orange County, New York, and the parties agree to submit to the personal and subject matter jurisdiction of said court.

8.3 Severability. The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.4 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be sold, assigned, pledged, subcontracted, transferred or otherwise conveyed by any means whatsoever by either the City or Provider without prior written consent of the other, and any sale, assignment, pledge, subcontract, transfer or other conveyance by either party without the other party's prior written consent shall be null and void.

8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest.

- 8.7 Authority to Contract. The undersigned officers and/or representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that it has taken all actions necessary to authorize entering into this Agreement.
- 8.8 Integration; Modification. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.
- 8.9 Non-appropriation. If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Agreement at the end of the then current fiscal year, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Provider at least sixty (60) days prior to any termination for non-appropriation of funds and will pay the Provider in accordance with this Agreement through the date of termination of this Agreement.
- 8.10 Subcontractors. This Agreement or any portion hereof shall not be sub-contracted without the prior approval of the City. No subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The City shall deal through Provider and any subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the City for the proper performance of the work and service of all subcontractors and any acts and omissions in connection with such performance. Nothing in this Agreement shall, or is intended or deemed to, create any legal, contractual or other relationship between the City and any subcontractor or sub-subcontractor.
- 8.11 No Waiver. The failure by the City to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by the City of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies the City may have arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.
- 8.12 No Third Party Beneficiaries. This Agreement and all of its provisions are solely for the benefit of Provider and the City and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

8.13 "Includes". For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

8.14 Incorporation of Recitals and Exhibits. The Exhibits and Recitals to this Agreement are incorporated herein and made a part hereof for all purposes.

9. DISCLOSURE OF AGREEMENT; INTERLOCAL ARRANGEMENTS.

9.1 Disclosure of Agreement Terms. The terms and conditions of this Agreement may be disclosed by either party to other public agencies for the purpose of such other agencies purchasing services under this Agreement pursuant to an interlocal or cooperative arrangement with the City. In addition, Provider may disclose the terms and conditions of this Agreement in an effort to show that the terms offered to another public agency are fair and reasonable or to determine the best value. It is understood that the Provider shall not be precluded from disclosing the terms and conditions of its form of Service Agreement to any other third party at Swagit's sole discretion and for any reason.

9.2 Included Parties; Interlocal Agreement. Pursuant to any interlocal, intergovernmental, or other such cooperative agreement with the City, Provider will accept orders from, and will furnish the Provider's Software, Hardware, Professional Services, and Managed Services as outlined in the Proposal to any governmental agency or other public entity authorized by the City to use the Proposal, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules.

9.3 Political Subdivision Participation. The Provider agrees to supply, sell, and contract separately with other similar or related political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the City, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules, in an effort to establish the terms and conditions as fair and reasonable.

10. DURATION

This Agreement shall become effective on the last day of execution by the parties, and shall continue in force for an initial term of twelve (12) months, unless sooner terminated as provided above. All pricing is to remain firm during the contract period. This Agreement will automatically renew for additional one-year terms unless this Agreement is terminated by either party providing written notice of its intent to terminate the Agreement to the other party not less than sixty (60) days prior to the end of the then current term.

11. SURVIVAL OF COVENANTS

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

12. COUNTERPARTS

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

City of Newburgh

Swagit Productions, LLC

Michael G. Ciaravino, City Manager

Bryan R. Halley, President

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution:

EXHIBIT A

SCOPE OF SERVICES

Scope of Services – Exhibit A

EASE Solution

Built upon years of industry experience, Extensible Automated Streaming Engine (EASE) is a software framework comprised of foundation and extension modules that work together to automate many otherwise manually intensive tasks. This completely hands-off solution meets the current and future needs of your entity without creating any additional work for clerks or webmasters.

- **Video Capture and Encoding**

EASE Encoder records content according to your broadcast schedule and transfer the recorded audio/video to the Swagit Content Network via a secure Virtual Private Network (VPN) connection, making it available for live and/or on-demand streaming.

- **Indexing and Cross Linking**

Using your published meeting agendas as a guide, Swagit's Managed Service Division (SMSD) indexes the meetings without any work from the city. SMSD will annotate your content by adding jump-to points with specific item headings, giving users the greatest flexibility to find the specific content they need. With these jump-to points, users can step through video by searching for or clicking specific items.

- **Agenda Management Integration**

If meeting packets or other related information is available online, SMSD will link them directly to the video player for easy access.

Swagit's EASE solution integrates with all Document/Agenda Management solutions.

- **Archiving**

Client audio/video can be stored securely on the Swagit Content Network indefinitely. Fault tolerance and high availability is assured through replication of audio/video content to multiple, geographically redundant, Storage Area Networks (SAN). Our standard packages include 80GB of storage, enough for approximately three full years of city council meetings.

- **Presentation**

By navigating through the video library, users can view a list of meetings chronologically and once in a selected meeting you can unleash the power of the jump-to markers to search for specific points within individual audio/video clips.

- **Delivery**

In order to deliver on-demand content to end users in a format that is native to their computer's operating system, Swagit can deliver content in all major streaming video formats: HTML5, Flash, Windows Media, QuickTime and Real. Swagit is proud to support HTML5 and Flash as its default formats, which has proven itself as the format of choice from such vendors as YouTube, Google Video, Facebook, ABC and NBC/Universal.

EASE Solution

• Monitoring

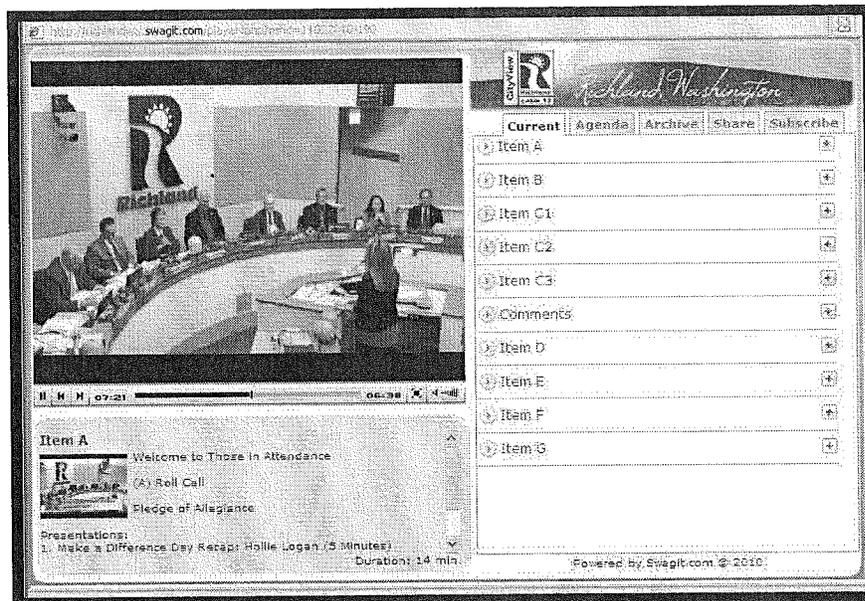
Swagit is monitoring all aspects of the Swagit Content Network to ensure its health and availability. This monitoring extends to cover remote Swagit EASE Encoders deployed on client premises. In the rare event of trouble our engineers are promptly notified so that they may dispatch a swift response in accordance with our support procedures.

• Statistics

Swagit collates log files from our streaming servers monthly and processes them with the industry recognized Google Analytics. Google Analytics generates reports ranging from high-level, executive overviews to in depth quality of service statistics. These reports help to highlight growth trends and identify popular content.

• Support

Beyond our proactive monitoring and response, Swagit offers ongoing, 24/7 technical support for any issues our clients may encounter. While our choice of quality hardware vendors and a thorough pre-installation testing phase go a long way toward ensuring trouble free operation of our EASE Encoders, we do recognize that occasionally unforeseen issues arise. In the event that our engineers detect a fault, they will work to diagnose the issue. If necessary, next business day replacement of parts will be completed. Swagit offers continual software updates and feature enhancements to our services and products for the life of your managed services contract.



Investment-Streaming Video

Streaming Video Hardware

Item Description	Type	Up-front Cost
Hardware/Software/Provisioning	1U	\$4,935.00
Swagit Basic Encoder, Osprey 260e Video Capture Card with Simulstream Software, Microsoft Windows, OS Installation, Swagit EASE Tools, Encoder Software Installation, System Burn-in, Branded Video Library Design, Rackmount Kit, Branded Player Design, Remote Installation.		

Streaming Video Monthly Managed Services

Item Description	Monthly Cost
Package 2: Up To 50 Indexed Meetings per year (EASE) - Includes Media On-Demand, 24/7 LIVE Stream, and up to 10 hours of additional specialty content per month (No staff involvement—Hands Free).	\$1,350.00
With Remote Switching Included (Up To 50 Meetings per year)	

Optional Services/Overages/Individual Pricing

Item Description	Cost
Each Additional Indexed On-Demand Meeting	\$150.00
Each Year of Meeting Storage Beyond 36 Month Window	\$180.00/year
Programming, Development or Design Implementation	\$120.00/hour
Each Additional Remotely Switched Meeting or Event	\$135.00

Broadcast System- Cosmos

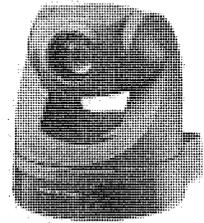
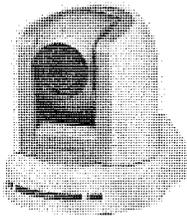
Built upon years of industry experience, Cosmos is a complete package of cameras and pro video-switching equipment that enables any client to fully outsource the production and operation of a multiple camera broadcast system to Swagit.

During the meetings or events, Swagit personnel will operate the Cosmos system remotely from their facility in Plano, Texas. The Cosmos system enables Swagit to control and switch from camera to camera depending on events taking place. When bundled with Swagit EASE, Cosmos can offer a full end-to-end "hands-free" solution that requires no client staff involvement for the operation, broadcast and streaming of an event or meeting content.

Cosmos enables detailed direct camera positioning (pan, tilt, zoom, focus, and more), preset-positions, and video settings (white balance, backlight, brightness) for the robotic cameras. Additionally, Cosmos communicates with the switcher to allow direct operation of the 'wipe' function from the camera control GUI. With this powerful package you or Swagit can control all your cameras individually and switch video sources on a video switcher locally or remotely. Cosmos is an invaluable integration of camera-control with switcher operations for use with live production setups like city chambers, churches, meeting rooms, and more.

Cosmos includes 2-4+ robotic (computer-controllable pan/tilt/zoom) cameras and you can choose from two main types: either single-chip (Sony EVI-D80) or 3-chip (Sony BRC-300) depending on your needs and budget. These popular Sony robotic cameras have excellent

video quality and performance. The EVI-D80 and BRC-300 has the ability for panning through wide angles of motion, tilting through large ranges with superb optical zoom, and dual video output of Y/C and composite. They also support both RS232 and RS422 (long distance over 1000 meters) control signals. In addition the EVI-D80 cameras can be mounted either 'up' or 'hanging upside down' for your convenience (they have built-in reversal of the picture and left/right/up/down motion controls).



Investment – Cosmos Broadcast System

QTY	Item Description	Price
3	Sony- EVI-D90 - high quality CCD cameras	
3	Sony- WM-30B - Wall Mount for Sony EVI-D90	
4	Sony- EVI DS-Cable- to daisy chain cameras	
1	Dell Optiplex 7010 with Windows 7, Intel Core i3 CPU (3.30GHz 3MB Cache), 4GB Ram	
1	Video + Audio extender via CAT5 up to 600 feet Model	
1	Datavideo SE-600 NTSC Video Switcher with Monitor and SDI/Firewire card	
2	Osprey 260e Without Simulstream	
1	APC Battery Backup	
1	Cosmos 5.4 software	
1	APC UPS Remote Power Switch and Management	
1	Touch Control Monitor	
1	All Cable, Connectors and Hardware necessary for installation	
1	Labor required to install, hook-up and provisioning	
Total Cost for Camera System & Installation*		\$20,647.00

*There may be additional installation costs incurred based on the building/fire code for the jurisdiction, any unknown cabling requirements or impediments to the installation such as fire walls, lack of a drop ceiling, conduit requirements, etc., along with other accessibility issues. For final installation costs we would need to engage in further discussions, receive a detailed site plan of rooms involved along with pictures or possibly conduct a physical site visit.

Cameras can be controlled locally by the client or remotely by Swagit's staff.

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT AN AMERICANS WITH DISABILITES ACT-COMPLIANT SWING
FROM UNITEX FOR USE IN A CITY PARK OR PLAYGROUND

WHEREAS, the Recreation Department has advised that Unitex has offered to donate a swing for disabled children to a City of Newburgh park or playground; and

WHEREAS, the swing meets all the requirements of the Americans with Disabilities Act; and

WHEREAS, the donation will include the installation of the swing in a park or playground designated by the City; and

WHEREAS, this Council has determined that accepting such donation is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager is hereby authorized to accept an Americans with Disabilities Act-compliant swing from Unitex for installation in a City of Newburgh park or playground, with the sincere thanks of the City Council on behalf of all of the residents of the City of Newburgh.



53 Edison Place, Level 3
NEWARK, New Jersey 07102

[SOCIAL] gmlvgroup [HANDLE] #gmlv
[MAIN] 973 8481100 [FACSIMILE] 973 6243836
GMLV.co

August 19th, 2014

To Whom it May Concern:

My name is Steven Manise and I represent Unitex, a locally, family owned business based here in Newburgh. We specialize in healthcare linen and apparel and we have been in business for over 90 years.

Every year we show appreciation for our local community, who supports us through the years, by being involved in charitable events and donations of all kinds. This year we are interested in adding a swing for disabled children to a local park/playground in Newburgh. We would like to donate the swing, inclusive of installation, at no cost to the park with no expectation of remuneration from the city. Our donation can include a single swing frame if there is no existing frame to hang this swing from, again, inclusive of installation. We would like to hang a plaque of some kind near the entrance of the park, which would state that Unitex donated the swing for disabled children at this park, also at no cost to the park or city, besides maintenance after installation is complete. Also, we would prefer to put the swing at a park close to a local hospital, if possible.

The specs on the swing are as follows:

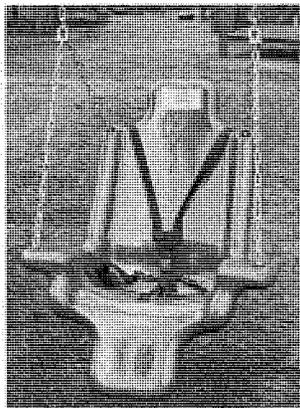
Dimensions of frame: 91"H x 85"W x 97"D

Dimensions of Swing alone: 33"W x 38.93"H

*Weight Capacity: Supports 125 lbs.

✦ Steven Manise
Office Manager
973.848.1100
smanise@gmlv.co

Here is a photo of the specific swing. It is durable, versatile and meets ADA(Americans with Disabilities Act) standards.



Please contact me directly with any questions, as we would like to move forward with this as soon as possible.

Sincerely,

Steven J. Manise
973-848-1100

✦ Steven Manise
Office Manager
973.848.1100
smanise@gmlv.co

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED A GRANT IN THE
AMOUNT OF \$25,000.00 FROM THE NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION UNDER THE 2013-2014 URBAN AND
COMMUNITY FORESTRY GRANT ROUND 12 AWARD NUMBER T305108

WHEREAS, the Conservation Advisory Council has requested that the City of Newburgh apply for and accept if awarded an Urban and Community Forestry grant in the amount of \$25,000.00 from the New York State Department of Environmental Conservation; and

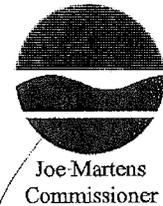
WHEREAS, such grant will be used to pay certain costs relating to materials, transportation site preparation, equipment and other costs in connection with tree planting in the City of Newburgh; and

WHEREAS, there is no City match required; and

WHEREAS, the City Council has determined it to be in the best interests of the City of Newburgh and to the well-being of its residents to apply therefor;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a grant in the amount of \$25,000.00 from the New York State Department of Environmental Conservation under the 2013-2014 Urban and Community Forestry Grant Round 12 Award Number T305108 to maintain existing trees and plant new trees in the City of Newburgh, with thanks to the Conservation Advisory Council.

New York State Department of Environmental Conservation
Division of Lands & Forests
Bureau of Private Land Services
270 Michigan Avenue, Buffalo, NY 14203
Phone: (716) 851-7010 \$ FAX: (716) 851-7005
Website: www.dec.ny.gov



July 14, 2014

James Slaughter, Interim City Manager
City of Newburgh
83 Broadway
Newburgh, NY 12550



RE: 2013-14 Urban and Community Forestry Grant – Round 12 - Contract No.: T305108

Dear Mr.Slaughter:

The New York State Department of Environmental Conservation (Department) recently awarded you a 2013-14 Urban and Community Forestry (UCF) grant for **City of Newburgh - Tree Inventory**.

This letter and enclosed contract package provides you with important documents and instructions regarding the next steps in executing a contract with the Department for UCF grant funds in the amount of **\$25000**. Please carefully review your contract in its entirety **and return all documents, listed below, to my attention no later than September 1, 2014**. Once your contract is approved by the Department, a fully executed contract will be returned to you for your records.

Minority and Women-Owned Business Enterprises (M/WBE) Equal Opportunity (EEO) Work Plan and Utilization Plan.

The MWBE Work Plan and Utilization Plan must be filled in online. This constitutes your agreement to MWBE goals. In the most basic terms, this program requires that you reach out to the MWBE listed firms to hire them, document your attempts to do so, report the amount you pay to MWBE firms and provide justification should you fail to reach the stated goals.

Please fill in the MWBE Work Plan and Utilization Plan to the best of your ability for your project at: http://www.dec.ny.gov/docs/administration_pdf/wp.pdf and http://www.dec.ny.gov/docs/administration_pdf/up.pdf, then click "submit by e-mail" near the bottom of the form. Any further questions regarding MWBE should be directed to DEC's M/WBE program at (518) 402-9240.

Proof of Insurance Documents

Please note that you will be required to provide the Department with proof of workers' compensation and disability benefits prior to entering into and executing a contract. If you are a Municipality, you are only required to submit proof of workers' compensation. Additional Liability Insurance may be required based on the type of work to be implemented. Review acceptable proofs of coverage which can be found at the following links, or as detailed in the Master Grant Contract, Attachment A – Program Terms and Conditions (XIV, page 9).

Workers' Compensation - <http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp>

Disability Benefits - <http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp>

Exemption - http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

Mandatory Submittal State Assistance Contract Documents

Contract Face Page

Original Contract (keep a copy for your records or until an executed copy is returned to you).

Contract Signature/Acknowledgment Pages – three (3) signature pages must be returned bearing the original signature of the individual authorized in the Resolution to enter into and execute this UCF contract with the Department. Copies of signature pages will not be accepted.

Attachment A - NOTE: Please enter your lead contract information on final page

Attachment B-1 Expenditure Based Budget (as previously submitted)

Attachment C – Work Plan Summary and Detail – (as previously submitted).

Attachment D – Payment and Reporting Schedule

Proof of Worker's Comp and Disability Insurance

Liability Insurance if necessary for your project

Along with the mandatory documents needing to be submitted, I will need a revised budget. The *Administrative Expenses* included in the budget (\$3750.00) exceed the allowable amount (15% max). Maximum eligible Administrative Expenses would be \$3,187.50. Your budget will need to be adjusted and re-submitted. I am including a blank budget for you to fill in. I also need an original Resolution with the City's stamp/seal.

Please return all mandatory documents, and any other requested information or documents, to my attention for final processing. Final processing includes approval and execution of the contract by DEC. Once the contract has been executed, an original copy will be returned to you for your records, along with a packet of forms, direction and information that will enable you to request reimbursement.

Payments under this contract will be rendered electronically, unless payment by paper check is expressly authorized by the Commissioner of the Department. Authorization forms are available at the Comptroller's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us or by telephone at (518) 402-4067.

Please keep in mind that Quick Start grants are only eligible to request one final payment upon completion of the project. Large and small communities may request quarterly payments prior to a final reimbursement and close-out payment (quarterly payments are optional, not mandatory).

Please contact me at 716-851-7010 if you need assistance or have any questions regarding the enclosed contract or related forms. Forms that are not originals, filled out incorrectly or are missing will result in delays in processing.

Sincerely,



Debra Gorka, Forester
NYS DEC
270 Michigan Avenue
Buffalo, NY 14203

debra.gorka@dec.ny.gov

Enclosures

c: C.K. Boyle
George Profous, Forester

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER AND THE POLICE CHIEF
TO ENTER INTO A LETTER AGREEMENT WITH
THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
MEMORIALIZING THE CITY OF NEWBURGH POLICE DEPARTMENT'S
COOPERATION AND COMMITMENT TO IMPLEMENTING AND MAINTAINING
POLICIES, PROCEDURES AND TRAINING PROTOCOLS TO ENSURE
MEANINGFUL ACCESS TO POLICE SERVICES
BY INDIVIDUALS OF LIMITED ENGLISH PROFICIENCY

WHEREAS, City of Newburgh Police Department has implemented a new General Order to establish guidelines for assisting individuals with Limited English Proficiency and to ensure maximum communications between law enforcement and all segments of the community will enable the City of Newburgh Police Department to more effectively meet the needs of the community; and

WHEREAS, The New York State Office of the Attorney General ("OAG") has proposed to enter into a Letter Agreement with the City of Newburgh Police Department to memorialize the City of Newburgh Police Department's cooperation with the OAG and the commitment to implementing and maintaining policies, procedures and training protocols to help ensure that individuals of Limited English Proficiency are provided meaningful access to the Newburgh Police Department; and

WHEREAS, said Letter Agreement is annexed hereto and made part hereof and it is deemed to be in the best interests of the City of Newburgh to enter into the Letter Agreement for such purposes;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager and the Police Chief be and they are hereby authorized to enter into a Letter Agreement with the New York State Office of the Attorney General memorializing the Newburgh Police Department's cooperation with the Attorney General's Office and commitment to implementing and maintaining policies, procedures and training protocols to help ensure that individuals of Limited English Proficiency are provided meaningful access to Newburgh Police Department services.

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT
A PROPOSAL AND EXECUTE AN AGREEMENT WITH
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)
FOR ASBESTOS ABATEMENT DESIGN SERVICES FOR
THE GREENHOUSE DEMOLITION PROJECT AT DOWNING PARK
AT A COST OF \$5,800.00

WHEREAS, by Resolution No.: 198-2014 of August 11, 2014, the City of Newburgh authorized the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for asbestos and lead paint surveys in connection with the Greenhouse Demolition Project located within Downing Park; and

WHEREAS, The City of Newburgh intends to continue with the next phase of the Greenhouse Demolition Project at Downing Park by accepting a proposal and entering into a proposal with QUEST for asbestos abatement design services to include specific pre-abatement activities and abatement procedures and strategies; developing asbestos abatement bid documents; preparation of bid lists, review of bid submittals and selecting the asbestos abatement contractor; on-site pre-bid walkthrough with prospective bidders; preparation of contract documents; and preparing and submitting Petitions for Variance or Other Relief to the New York State Department of Labor; and

WHEREAS, the cost for these services will be \$5,800.00 and funding shall be derived from CD1 8686 0448 8155 214; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for asbestos abatement design services for the Downing Park Greenhouse Demolition Project, 207 Carpenter Avenue, Newburgh, New York at a cost of \$5,800.00.

QuES&T

Quality Environmental Solutions & Technologies, Inc.

August 26, 2014

City of Newburgh
83 Broadway
Newburgh, New York 12550

ATTN: Jason Morris

Via Email: jmorris@cityofnewburgh-ny.gov

Re.: Greenhouse & Storage Buildings, 207 Carpenter Avenue, Newburgh, NY – 2014 Demolition Project
Request for Proposal – Abatement Design Services

Dear Mr. Morris,

Thank you for the opportunity to discuss the needs of the City of Newburgh in the environmental consulting and remediation services area. **Quality Environmental Solutions & Technologies, Inc. (QuES&T)** is pleased to submit the attached proposal to provide Abatement Design Services for BID Issue to support the above-referenced project.

QuES&T is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. **QuES&T's** extensive Nuclear Power Industry experience makes us uniquely qualified to provide technical support in state-of-the-art techniques for engineering and contamination control. Additionally, this experience enables us to integrate the essential concepts of "critical path" schedules and minimizing personnel exposures while maintaining a high level of attention to the specific details of each project. **QuES&T** personnel satisfy numerous ANSI and NUREG experience requirements of the Nuclear Regulatory Commission. Our staff has served in various capacities in the Health Physics and Nuclear Engineering disciplines in operational power reactors, nuclear powered vessels, radio-pharmaceuticals and government prototypes.

We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. **QuES&T** feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of future liability to the City of Newburgh.

In this regard, **QuES&T** has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

QuES&T offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. **QuES&T** offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors, Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet the specific needs of the City of Newburgh.

QuES&T provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at **QuES&T's** facility or yours.

For additional information concerning this submittal, please contact us at (845) 298-6031. We look forward to working with the City of Newburgh in the environmental consulting and remediation services area.

Sincerely,



Paul A. Rodriguez
Director, Field & Technical Services
NYS/AHERA Inspector/Project Designer
Cert. #AH 02-04344
EPA Lead Inspector/Lead Risk Assessor

Cc: QuES&T File

ABATEMENT DESIGN SERVICES
for
CITY OF NEWBURGH
83 Broadway
Newburgh, New York 12550
at
GREENHOUSES & STORAGE BUILDINGS
207 Carpenter Avenue
Newburgh, New York 12550

QuES&T agrees to provide the following services:

➤ **ABATEMENT SPECIFICATIONS & WORK PLAN DEVELOPMENT**

■ **Item 1 – Asbestos Abatement Design Documentation**

QuES&T will provide NYSDOL certified Project Designer personnel to develop the required abatement specifications and contract documents. Preparation of the required specifications shall include incorporation of existing NYSDOL Applicable Variances or development of Job Specific Variances to ensure the most cost-effective and technically sound solution is implemented. QuES&T will:

- Outline specific pre-abatement activities and abatement procedures and strategies for compressing the project schedule and providing the most cost-effective solution to environmental remediation requirements. The design will consider utilizing existing applicable variances, new variances, and means and methods for dealing with operational constraints, adjacent occupied areas, isolation of the work areas, and specific remediation procedures and criteria.
- Develop asbestos abatement bid documents, including working drawings and specifications, for the purpose of securing competitive bidding to perform asbestos remediation.
- Assist in preparation of bid lists, review of bid submittals and assist *City of Newburgh (The Owner) and/or The Owner's Representative(s)* in the selection of the asbestos abatement contractor, as required.
- Conduct on-site pre-bid walkthrough with prospective bidders, and resolve outstanding questions on contract scope and deliverables, prior to bid receipt and award, as required.

■ **Item 2 – Petition for Variance (if necessary)**

QuES&T will prepare and submit Petitions for Variance or Other Relief (DOSH-751) and supporting documentation to the NYSDOL regarding the proposed work scope. QuES&T will act as the agent of *City of Newburgh (The Owner) and/or The Owner's Representative(s)* during review and approval of Variance Petition submittals by NYSDOL.

ABATEMENT DESIGN SERVICES
for
CITY OF NEWBURGH
83 Broadway
Newburgh, New York 12550
at
GREENHOUSES & STORAGE BUILDINGS
207 Carpenter Avenue
Newburgh, New York 12550

*****LUMP SUM PRICING*****

➤ **ABATEMENT SPECIFICATIONS & WORK PLAN DEVELOPMENT**

Item 1: Asbestos Abatement Specifications (1- Design Package)

- Preparation of **one (1)** Asbestos Abatement Specification for BID Issue &
Develop Contract Bid Documents w/Professional Engineer & Project Designer Stamp

❖ Single Asbestos Spec Package (1-Spec for Project) : **\$ 4,600.00**
(\$3,500/spec + \$750/PE&PD stamp + No AutoCAD Work + \$350/Pre-Bid Meeting) **(Lump Sum)**

Item 2: Petition for Variance (if necessary)

- Development & Preparation of **one (1)** Petition for NYSDOL Site-Specific Variance
Per Project to address removal & disposal of Asbestos-containing Materials (ACM)

❖ NYSDOL Variance Prep & Variance Filing Fee **\$ 1,200.00**
(Each)

QuES&T

Quality Environmental Solutions & Technologies, Inc.

I. ASBESTOS SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- Sr. Principal: \$225/Hr ST; \$255/Hr OT
- Principal: \$185/Hr ST; \$225/Hr OT
- Project Manager: \$90/Hr ST/OT
- EPA/NYS DOL/NYCDEP Asbestos Inspector:
 - \$320/4-hr day Includes Calibrated Area A/S Equipment
 - \$500/8-hr day Includes Calibrated Area A/S Equipment
 - \$ 80/hr OT
- EPA/NYS DOL Combined Project Monitor/Air Sampling Technician:
 - \$275/4-hr day Includes Calibrated Area A/S Equipment
 - \$400/8-hr day Includes Calibrated Area A/S Equipment
 - \$ 75/hr; OT

Item 2: Asbestos Laboratory Services

- A/S Sample Analysis (PCM):
 - \$ 12/Sample Includes 72-hr turn-around of results
 - \$ 15/Sample Includes 24-hr turn-around of results
 - \$ 17/Sample Includes 6-hr turn-around of results
 - \$ 20/Sample Includes Rush turn-around of results.
- A/S Sample Analysis (AHERA-TEM):
 - \$100/Sample Includes 48-hr turn-around of results
 - \$125/Sample Includes 24-hr turn-around of results
 - \$175/Sample Includes 12-hr turn-around of results
 - \$225/Sample Includes 6-hr turn-around of results
- Bulk Sample Analysis (PLM):
 - \$ 14/Layer Includes 7 day turn-around of results
 - \$ 16/Layer Includes 5 day turn-around of results
 - \$ 20/Layer Includes 72-hr turn-around of results
 - \$ 25/Layer Includes 24-hr turn-around of results
 - \$ 30/Layer Includes 12-hr turn-around of results
 - \$ 45/Layer Includes Rush turn-around of results
- Bulk Sample Analysis (PLM-NOB):
 - \$ 16/Layer Includes 7 day turn-around of results
 - \$ 23/Layer Includes 5 day turn-around of results
 - \$ 30/Layer Includes 48-hr turn-around of results
 - \$ 40/Layer Includes 24-hr turn-around of results
 - \$ 60/Layer Includes 12-hr turn-around of results
- Bulk Sample Analysis (QTEM):
 - \$ 25/Layer Includes 7 day turn-around of results
 - \$ 50/Layer Includes 5 day turn-around of results
 - \$ 65/Layer Includes 48-hr turn-around of results
 - \$ 70/Layer Includes 30-hr turn-around of results
 - \$ 110/Layer Includes 12-hr turn-around of results

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

II. SAFETY & ENVIRONMENTAL SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- Certified Industrial Hygienist: \$175/Hr ST; \$215/Hr OT
- Certified Safety Professional: \$175/Hr ST; \$215/Hr OT
- EPA LBP Inspector/Risk Assessor: \$ 90/Hr ST/OT
- IH Tech: \$320/4-hr day Includes Calibrated Area A/S Equipment
\$500/8-hr day Includes Calibrated Area A/S Equipment
\$ 80/hr; OT

Item 2: Laboratory Services

- Lead - Air/Paint Chip/Dust Sample Analysis (AAS/FLAA):
 - \$ 20/Sample Includes 3-5 Day turn-around of results
 - \$ 25/Sample Includes 48-hr turn-around of results
 - \$ 30/Sample Includes 24-hr turn-around of results
 - \$ 45/Sample Includes 6-hr turn-around of results
- PCB – Bulk Material Sample Analysis:
 - \$100/Sample Includes 5 Day turn-around of results
 - \$150/Sample Includes 3 Day turn-around of results
 - \$200/Sample Includes 48-hr turn-around of results
 - \$250/Sample Includes 24-hr turn-around of results

Item 3: Equipment Charges

- Niton XRF: \$175/Day
- Electrical Generator: \$ 75/Day (2-Day Minimum)
- SCBA: \$300/Day
- Confined Space Tripod: \$ 150/Day

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

III. INDUSTRIAL HYGIENE SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- Certified Industrial Hygienist: \$175/Hr ST; \$215/Hr OT
- Certified Safety Professional: \$175/Hr ST; \$215/Hr OT
- Industrial Hygiene Scientist/CBST \$125/Hr ST; \$150/Hr OT
- Project Manager: \$ 90/Hr ST/OT
- IH Tech: \$320/4-hr day Includes Calibrated Area A/S Equipment
\$500/8-hr day Includes Calibrated Area A/S Equipment
\$ 80/hr; OT

Item 2: Microbiological Laboratory Services

- Air Sample Analysis (Total Spore Counts):
 - \$120/Sample Includes same-day turn-around of results
 - \$100/Sample Includes 24-48 hr turn-around of results
 - \$ 80/Sample Includes 5-7 day turn-around of results
- Air Sample Analysis (Culturable Fungi; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 70/Sample Enumeration & Identification to genus or species
 - ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- Air Sample Analysis (Culturable Bacteria; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 70/Sample Enumeration & Identification to genus or species
- Bulk/Swab Sample Analysis (Culturable Fungi; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 90/Sample Enumeration & Identification to genus or species
 - ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- Bulk/Swab Sample Analysis (Culturable Bacteria; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 90/Sample Enumeration & Identification to genus or species
- Other Microbiological Services and PCR Technology Available: CALL FOR PRICING
- Additional Industrial Hygiene Services Available: CALL FOR PRICING AND CAPABILITIES

Item 3: Equipment Charges

- Anderson Air Sampler: \$125/Day (Single Stage N-6 Impactor)
- Boroscope: \$ 50/Day
- 4-Gas Monitor w PID: \$200/Day
- Infrared Camera: \$225/Day
- Delmhorst BD-2100: \$100/Day (Moisture Survey Meter)
- ASHRAE IAQ Meter: \$200/Day
- PM-10 Impactor/Sampler: \$125/Day
- Additional Equipment: Call For Pricing

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

IV. MISCELLANEOUS SERVICES

Item 4: Miscellaneous Services

- Asbestos/Lead/Environmental 'Letter' Report w/o Drawings - \$150/each.
- Asbestos/Lead/Environmental 'Letter' Report w/KeyCAD Drawings - \$200/each.
- Asbestos/Lead/Environmental 'Final Report' w/o Drawings - \$250/each.
- Asbestos/Lead/Environmental 'Final Report' w/KeyCAD Drawings - \$300/each.
- Abatement Specifications / AutoCAD / Bidding Process – Priced Based on Scope of Work.
- Conduct Onsite Bid Walkthrough w/Prospective Contractors – Priced Based on Scope of Work.
- Travel & Misc. Materials – Actual Mileage (@ \$0.550/mile) plus Actual Tolls & Parking.
- Laboratory analysis turnaround times begin when samples are received at Laboratory and does not include weekends or holidays.

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)
FOR PROFESSIONAL SERVICES RELATED TO SAMPLING OF
SUSPECTED ASBESTOS CONTAINING MATERIAL FOR THE POLICE DEPARTMENT**

WHEREAS, the City of Newburgh wishes to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) to perform limited bulk sampling of suspect Asbestos-containing Materials (ACM) within the Locker Room and certain areas of the north side of the Police Department; and

WHEREAS, the proposal provides for the testing and sampling of suspected asbestos containing materials and the preparation of 1 Final Summary Report identifying estimated quantity, location, types, and condition of identified asbestos containing materials; and

WHEREAS, the cost for these services will be \$1,745.00 which shall be derived from the 2013 BAN; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for professional services related to sampling asbestos containing material for the Police Department.

QuES&T

Quality Environmental Solutions & Technologies, Inc.

August 21, 2014

City of Newburgh
83 Broadway
Newburgh, NY 12550

ATTN: Jason C. Morris, City Engineer

Via E-mail: JMorris@cityofnewburgh-ny.gov

Re.: City of Newburgh – Police Station, 55 Broadway, Newburgh, NY 12550
Request for Proposal – Miscellaneous Asbestos Bulk Sampling Services

Dear Mr. Morris,

Quality Environmental Solutions & Technologies, Inc. (**QuES&T**) is pleased to submit the attached proposal to perform limited bulk sampling of suspect Asbestos-containing Materials (ACM) within the following specific areas of the above-referenced location:

■ **Interiors**

- 1) Locker Room:
 - Sprayed-on Fireproofing (SOFP).

■ **Exteriors**

- 2) Northside – Upper Elevation Excavation Pit:
 - Orangeburg Piping.
 - Foundation Waterproofing Tar, Skim Coat & CMU System.
 - Brick & Mortar Façade System & Waterproofing Tar/Vapor Barrier/Underlayments.
- 3) Northside – Lower Elevation Canopy Roof, Stairwell & Walkways:
 - Plaster Canopy Ceiling & Caulk/Sealants.
 - Brick & Mortar Façade System & Waterproofing Tar/Vapor Barrier/Underlayments.
 - Cementitious Slabs.

QuES&T is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. **QuES&T**'s extensive Nuclear Power Industry experience makes us uniquely qualified to provide technical support in state-of-the-art techniques for engineering and contamination control. Additionally, this experience enables us to integrate the essential concepts of "critical path" schedules and minimizing personnel exposures while maintaining a high level of attention to the specific details of each project. **QuES&T** personnel satisfy numerous ANSI and NUREG experience requirements of the Nuclear Regulatory Commission. Our staff has served in various capacities in the Health Physics and Nuclear Engineering disciplines in operational power reactors, nuclear powered vessels, radio-pharmaceuticals and government prototypes.

We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. **QuES&T** feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of future liability to the City of Newburgh.

In this regard, **QuES&T** has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

QuES&T offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. **QuES&T** offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors, Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet the specific needs of the City of Newburgh.

QuES&T provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at **QuES&T's** facility or yours.

For additional information concerning this submittal, please contact me at (845) 298-6031. We look forward to working with the City of Newburgh in the environmental consulting and remediation services area.

Sincerely,



Paul A. Rodriguez

Director, Field & Technical Services
NYS/AHERA Inspector/Project Designer
Cert. #AH 02-04344
EPA Lead Inspector/Lead Risk Assessor

Cc: QuES&T File

MISCELLANEOUS ASBESTOS BULK SAMPLING
for
CITY OF NEWBURGH
83 Broadway
Newburgh, New York 12550
at
CITY OF NEWBURGH – POLICE STATION
55 Broadway
Newburgh, New York 12550

QuES&T agrees to provide the following services:

➤ **Limited Asbestos Bulk Sampling**

- Provide certified NYS/AHERA Asbestos Inspector(s) to perform limited bulk sampling of suspect Asbestos-containing Materials (ACM) within specific interior and exterior areas of the above-referenced location, as described on Page #1 of this proposal.
- **QuES&T** will review building/structure plans and records, provided by the Owner and/or the Owner's Representative(s), for references to asbestos, ACM, Presumed Asbestos-containing Materials (PACM), suspect miscellaneous ACM or asbestos materials used in construction, renovation or repair in the affected building area(s).
- Perform limited bulk sampling of suspect Asbestos-containing Materials (ACM) in compliance with 12 NYCRR Part 56 regulations.
- Perform collection and analysis of suspect friable Asbestos-containing Materials (ACM) using Polarized Light Microscopy (PLM) analytical protocol.
- Perform collection and analysis of suspect non-friable organically bound Asbestos-containing Materials (ACM) using both Polarized Light Microscopy-NOB (PLM-NOB) and Quantitative Transmission Electron Microscopy (QTEM) analytical protocols.
- Discussion of laboratory results for all bulk samples (PLM & QTEM/PLM).
- Documentation of all analytical laboratory certifications.
- Preparation of one (1) Final Summary Report identifying estimated quantity, location, types, and condition of identified Asbestos-containing Materials (ACM).

MISCELLANEOUS ASBESTOS BULK SAMPLING
for
CITY OF NEWBURGH
83 Broadway
Newburgh, New York 12550
at
CITY OF NEWBURGH – POLICE STATION
55 Broadway
Newburgh, New York 12550

This proposal is based on the following assumptions:

- **QuES&T** shall perform all inspections visually; using reasonable care and judgment. Limited localized demolition will be performed to access representative concealed surfaces, as practicable. *The City of Newburgh (The Owner)* recognizes & agrees that ACM concealed within structural components & accessible only through extensive mechanical or structural demolition may not be identified as part of this survey.
- NO sampling of additional “Non-Inspection Areas” or building components/materials shall be performed.
- **QuES&T** shall not perform patching of sampling locations, and recommends that *The City of Newburgh (The Owner)* hire an independent General Contractor to accompany **QuES&T** inspection personnel and perform required patching accordingly.
- **QuES&T** shall not be responsible for damage caused to building finishes, surfaces or equipment by sampling. Responsibility and cost for repair of damaged building finishes, surfaces and/or equipment shall be by *The City of Newburgh (The Owner)*.
- **QuES&T** will exercise reasonable caution to minimize disturbance of ACM during the inspection process. However, clean-up of ACM disturbed or dislodged during the inspection process shall be the responsibility of *The City of Newburgh (The Owner)*.
- *The City of Newburgh (The Owner)* responsible for providing immediate access into all inspection areas and securing same upon completion.
- Inspection work to be conducted during normal weekday “Business Hours” (M-F; 8am-5pm).
- Laboratory sample analysis turnaround times (TAT) shall be Standard 5-Business Days. TAT commences upon laboratory receipt of samples, and does not include weekends or holidays.
- **QuES&T** shall commence terms of this contract upon receipt of written Notice to Proceed and/or Purchase Order (PO) number.

MISCELLANEOUS ASBESTOS BULK SAMPLING
for
CITY OF NEWBURGH
83 Broadway
Newburgh, New York 12550
at
CITY OF NEWBURGH – POLICE STATION
55 Broadway
Newburgh, New York 12550

PRICING

➤ Limited Asbestos Bulk Sampling

Asbestos Inspector Labor (1 Inspector, ½ Day @ \$320/each)	\$ 320.00
Technician Ass't Labor (1 Tech, ½ Day @ \$275/each)	No Charge
PLM Asbestos Bulk Analysis – 40* @ \$14/layer	\$ 560.00*
QTEM/PLM Asbestos Bulk Analysis – 15* @ \$41/layer	\$ 615.00*
1 – Final Asbestos Report w/ACM Location Drawings	\$ 200.00
Travel, S&H & Misc. Materials (1 day @ \$50/day)	\$ 50.00
Estimated Total :	\$ 1,745.00*

NOTES:

1. Estimated number of samples to be collected/analyzed.
2. Client shall be charged for actual samples analyzed and services rendered.
3. Additional services required shall be billed in accordance with attached 2014 QuES&T Unit Rates.
4. Pricing valid until December 31, 2014.

ACCEPTANCE OF PROPOSAL #P14-3990

Payment Terms: Billing increments will be at approximately two-week intervals. Payment Shall Be Net 15 Days; Following Delivery Of Invoice. To Execute This Agreement, Please Review, Sign, Date & Return Two Copies of the signed proposal. A fully executed copy will be sent for your records. Late Payments Shall Be Assessed a Penalty of 1.5% per Month.

City of Newburgh – Authorized Representative:

By _____
Signature Print Name & Title Date

Quality Environmental Solutions & Technologies, Inc.:

By _____
Signature Paul A. Rodriguez, Director, Field & Technical Services Date

QuES&T

Quality Environmental Solutions & Technologies, Inc.

I. ASBESTOS SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- Sr. Principal: \$225/Hr ST; \$255/Hr OT
- Principal: \$185/Hr ST; \$225/Hr OT
- Project Manager: \$90/Hr ST/OT
- EPA/NYSDOL/NYCDEP Asbestos Inspector:
 - \$320/4-hr day Includes Calibrated Area A/S Equipment
 - \$500/8-hr day Includes Calibrated Area A/S Equipment
 - \$ 80/hr OT
- EPA/NYSDOL Combined Project Monitor/Air Sampling Technician:
 - \$275/4-hr day Includes Calibrated Area A/S Equipment
 - \$400/8-hr day Includes Calibrated Area A/S Equipment
 - \$ 75/hr; OT

Item 2: Asbestos Laboratory Services

- A/S Sample Analysis (PCM):
 - \$ 12/Sample Includes 72-hr turn-around of results
 - \$ 15/Sample Includes 24-hr turn-around of results
 - \$ 17/Sample Includes 6-hr turn-around of results
 - \$ 20/Sample Includes Rush turn-around of results.
- A/S Sample Analysis (AHERA-TEM):
 - \$100/Sample Includes 48-hr turn-around of results
 - \$125/Sample Includes 24-hr turn-around of results
 - \$175/Sample Includes 12-hr turn-around of results
 - \$225/Sample Includes 6-hr turn-around of results
- Bulk Sample Analysis (PLM):
 - \$ 14/Layer Includes 7 day turn-around of results
 - \$ 16/Layer Includes 5 day turn-around of results
 - \$ 20/Layer Includes 72-hr turn-around of results
 - \$ 25/Layer Includes 24-hr turn-around of results
 - \$ 30/Layer Includes 12-hr turn-around of results
 - \$ 45/Layer Includes Rush turn-around of results
- Bulk Sample Analysis (PLM-NOB):
 - \$ 16/Layer Includes 7 day turn-around of results
 - \$ 23/Layer Includes 5 day turn-around of results
 - \$ 30/Layer Includes 48-hr turn-around of results
 - \$ 40/Layer Includes 24-hr turn-around of results
 - \$ 60/Layer Includes 12-hr turn-around of results
- Bulk Sample Analysis (QTEM):
 - \$ 25/Layer Includes 7 day turn-around of results
 - \$ 50/Layer Includes 5 day turn-around of results
 - \$ 65/Layer Includes 48-hr turn-around of results
 - \$ 70/Layer Includes 30-hr turn-around of results
 - \$ 110/Layer Includes 12-hr turn-around of results

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

II. SAFETY & ENVIRONMENTAL SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- Certified Industrial Hygienist: \$175/Hr ST; \$215/Hr OT
- Certified Safety Professional: \$175/Hr ST; \$215/Hr OT
- EPA LBP Inspector/Risk Assessor: \$ 90/Hr ST/OT
- IH Tech:
 - \$320/4-hr day Includes Calibrated Area A/S Equipment
 - \$500/8-hr day Includes Calibrated Area A/S Equipment
 - \$ 80/hr; OT

Item 2: Laboratory Services

- Lead - Air/Paint Chip/Dust Sample Analysis (AAS/FLAA):
 - \$ 20/Sample Includes 3-5 Day turn-around of results
 - \$ 25/Sample Includes 48-hr turn-around of results
 - \$ 30/Sample Includes 24-hr turn-around of results
 - \$ 45/Sample Includes 6-hr turn-around of results
- PCB – Bulk Material Sample Analysis:
 - \$100/Sample Includes 5 Day turn-around of results
 - \$150/Sample Includes 3 Day turn-around of results
 - \$200/Sample Includes 48-hr turn-around of results
 - \$250/Sample Includes 24-hr turn-around of results

Item 3: Equipment Charges

- Niton XRF: \$175/Day
- Electrical Generator: \$ 75/Day (2-Day Minimum)
- SCBA: \$300/Day
- Confined Space Tripod: \$ 150/Day

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

III. INDUSTRIAL HYGIENE SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- Certified Industrial Hygienist: \$175/Hr ST; \$215/Hr OT
- Certified Safety Professional: \$175/Hr ST; \$215/Hr OT
- Industrial Hygiene Scientist/CBST \$125/Hr ST; \$150/Hr OT
- Project Manager: \$ 90/Hr ST/OT
- IH Tech: \$320/4-hr day Includes Calibrated Area A/S Equipment
\$500/8-hr day Includes Calibrated Area A/S Equipment
\$ 80/hr; OT

Item 2: Microbiological Laboratory Services

- Air Sample Analysis (Total Spore Counts):
 - \$120/Sample Includes same-day turn-around of results
 - \$100/Sample Includes 24-48 hr turn-around of results
 - \$ 80/Sample Includes 5-7 day turn-around of results
- Air Sample Analysis (Culturable Fungi; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 70/Sample Enumeration & Identification to genus or species
 - ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- Air Sample Analysis (Culturable Bacteria; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 70/Sample Enumeration & Identification to genus or species
- Bulk/Swab Sample Analysis (Culturable Fungi; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 90/Sample Enumeration & Identification to genus or species
 - ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- Bulk/Swab Sample Analysis (Culturable Bacteria; One Medium): Sample Turn-Around Time 7-10 Days
 - \$ 90/Sample Enumeration & Identification to genus or species
- Other Microbiological Services and PCR Technology Available: CALL FOR PRICING
- Additional Industrial Hygiene Services Available: CALL FOR PRICING AND CAPABILITIES

Item 3: Equipment Charges

- Anderson Air Sampler: \$125/Day (Single Stage N-6 Impactor)
- Boroscope: \$ 50/Day
- 4-Gas Monitor w PID: \$200/Day
- Infrared Camera: \$225/Day
- Delmhorst BD-2100: \$100/Day (Moisture Survey Meter)
- ASHRAE IAQ Meter: \$200/Day
- PM-10 Impactor/Sampler: \$125/Day
- Additional Equipment: Call For Pricing

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

IV. MISCELLANEOUS SERVICES

Item 4: Miscellaneous Services

- Asbestos/Lead/Environmental 'Letter' Report w/o Drawings - \$150/each.
- Asbestos/Lead/Environmental 'Letter' Report w/KeyCAD Drawings - \$200/each.
- Asbestos/Lead/Environmental 'Final Report' w/o Drawings - \$250/each.
- Asbestos/Lead/Environmental 'Final Report' w/KeyCAD Drawings - \$300/each.
- Abatement Specifications / AutoCAD / Bidding Process – Priced Based on Scope of Work.
- Conduct Onsite Bid Walkthrough w/Prospective Contractors – Priced Based on Scope of Work.
- Travel & Misc. Materials – Actual Mileage (@ \$0.550/mile) plus Actual Tolls & Parking.
- Laboratory analysis turnaround times begin when samples are received at Laboratory and does not include weekends or holidays.

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
MCLAREN ENGINEERING GROUP FOR INSPECTION AND
DESIGN SERVICES RELATED TO REPAIRING AND REHABILITATING
THE ROUTE 32/ METAL ARCH CULVERT BRIDGE ALSO KNOWN AS THE LAKE
STREET BRIDGE AT A COST OF \$133,328.00

WHEREAS, the City of Newburgh wishes to accept a proposal and execute an agreement with McLaren Engineering Group for inspection and engineering design services related to the repair and rehabilitation of the Route 32/Metal Arch Culvert Bridge also known as the Lake Street Bridge; and

WHEREAS, the proposal includes an emergency inspection and report, topographic survey, final design and construction documents, coordination with New York State regulatory agencies and utility companies and assistance in bidding and design support services during construction; and

WHEREAS, Task No. 1, the emergency inspection and report, have been completed and the cost of this task in the amount of \$19,448.000 and the City intends to proceed with Tasks No. 2, 3, 4 and 5 at a remaining cost of \$133,328.00 and funding shall be derived from A.5112.0200; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that continuing with such work as proposed would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with McLaren Engineering Group to continue with engineering design services in connection with repairing and rehabilitating the Route 32/Metal Arch Culvert Bridge also known as the Lake Street Bridge at a cost of \$133,328.00.



June 16, 2014

bridge, highway & rail engineering
entertainment engineering
subaqueous investigation
civil & site engineering
structural design
marine facilities
geotechnics
surveying
forensics

City of Newburgh
Office of the Engineer
83 Grand Street
Newburgh, NY 12550

Attn: Jason C. Morris, P.E.

Email: JMorris@cityofnewburgh-ny.gov

Re: Rehabilitation of Route 32 Bridge/Culvert over Quassiac Creek (Lake Street Bridge),
BIN 2022260, City of Newburgh, NY

PROPOSAL NO. 140246.00

McLaren Engineering Group (MEG) is pleased to provide this proposal for engineering services in connection with the rehabilitation of Route 32 Bridge/Culvert (Lake Street Bridge) located in the City of Newburgh, New York. This proposal is to provide design services for the replacement of the existing corrugated metal arch superstructure with a new in-kind corrugated metal arch superstructure, modification of bridge abutment footings and replacement of damaged sections of the utility lines embedded in the roadway fill overlaid on the arched structure.

Introduction

The Lake Street Bridge over Quassiac Creek was constructed in 1973. The bridge superstructure consists of corrugated metal arch plate having a rise of 12 feet 7 inches measured from the base to the crown of the arch. The arch plate is covered with varying depth of fill ranging from approximately 8 feet at the crown to 21 feet at the abutments. The other primary members of the superstructure comprise a tie beam at the crown and two thrust beams located about 9 feet from the base of the structure. The tie beam provides transverse stability by connecting two headwalls; it is not connected with the corrugated arch plate. The thrust beams were provided to prevent the arch from bulging that may be caused by the overlaid fill and passages of vehicular traffic. The bridge carries two lanes of vehicular traffic (one in each direction). It is a single span structure with a span length of 32 feet 7 inches and fascia to fascia width of 72 feet. The roadway is approximately 62 feet wide with 5-foot wide sidewalks on both sides of the road. The bridge carries utility lines including water, sewer and gas lines buried in the roadway fill. The bridge is primarily owned and maintained by the City of Newburgh. The secondary ownership and maintenance responsibility lies with the NYSDOT, Region 8.

During the performance of 2013 Diving Inspection, the bridge was red flagged on September 30, 2013 prompted by the discovery of lines of perforation caused by severe corrosion in the metal arch plate at the water surface level along the entire length of both Begin and End Abutments. Alarmed by the observation of significant settlement of the roadway above the metal arch, the City of Newburgh requested MEG to perform an emergency inspection on June 7, 2014. During the emergency inspection it was noticed that the sections of the metal arch plate were entirely lost and separated along the lines of perforation of both abutments.

Offices: New York, Maryland, Florida, Connecticut, California

Licensed in:

Alabama • Arizona • Arkansas • California • Colorado • Connecticut • Delaware • District of Columbia • Florida • Georgia • Hawaii • Idaho • Illinois • Indiana • Kansas • Kentucky • Louisiana • Maine • Maryland • Massachusetts • Michigan • Minnesota • Mississippi • Missouri • Nebraska • Nevada • New Hampshire • New Jersey • New Mexico • New York • North Carolina • Ohio • Oklahoma • Oregon • Pennsylvania • Rhode Island • South Carolina • Tennessee • Texas • Trinidad & Tobago • Utah • USVI • Vermont • Virginia • Washington • West Virginia • Wisconsin • Wyoming

M. G. McLAREN, P.C.

100 Snake Hill Road
West Nyack, New York 10994

Phone (845) 353-6400

Fax (845) 353-6509

e-mail: mgmclaren@mgmclaren.com

On the web: www.mgmclaren.com

Two feasible rehabilitation/replacement alternatives have been considered to handle this emergency repair need. The rehabilitation alternative consists of adding prefabricated new corrugated arch plates at the inside face while keeping a gap of approximately 3 inches between existing and new arch plates. The gap will be filled with non-shrink grout. Installation of prefabricated plates will be faster, less disturbance to the underpass creek and cost effective. A replacement alternative will consist of construction of stub abutments supported on piles and accommodation of a new superstructure by removing large volume of fill (fill depth varies from 8 ft. at the crown to 21 feet at abutments) while maintaining the utility lines embedded in the fill. The replacement alternative will be labor intensive, time consuming, disruptive to traffic above, will create disturbance in the creek below, and cost prohibitive. Thus, the rehabilitation alternative is recommended and the scope is presented below.

Scope of Work

The scope of work comprises adding new prefabricated corrugated arch plates at the inside face; modification of the abutment footings for anchoring the corrugated arch plates; repairs to undermined wingwalls; and coordination with the NYSDEC and Utility Companies. The following tasks will be performed under the rehabilitation scope:

Task 1 – Emergency Inspection and Report

Under this task, MEG performed an emergency inspection on June 7, 2014 to determine the cause of recent settlement which occurred in the roadway fill above the structure. A 3-man crew performed both the above water and underwater inspection for the structure. MGM crew performed an in-depth inspection of the corrugated arch plate superstructure. A condition assessment report documenting all the findings of the emergency inspection will be prepared and submitted to the City of Newburgh.

Task 2 – Topographic Survey

Topographic survey will be performed to determine plan, profile and section of the bridge alignment. Vertical elevations and horizontal offsets from survey baseline will be measured and plotted at two (2) cross-sections at 25 feet intervals on the bridge, and at four (4) cross-sections at 50 feet intervals at each approach. Measurements will be taken inside the bridge/culvert at base, spring line, chord line and crown at 10 feet intervals (8 sections).

Task 3 – Final Design and Construction Documents

Under this task, MEG will perform detailed design and prepare construction documents. The structure will be modeled and finite element analysis will be run to determine the thickness and depth of corrugation of the new arch plate. Plans will be prepared for the substructure modification for anchoring the new arch plate and for the repairs to the undermined wingwalls. The final plans, specifications and cost estimates (PS&E) will be prepared in accordance with NYS DOT standards and specifications.

Task 4 – Coordination with NYSDEC and Utility Companies

The bridge spans over the Quassiac Creek, which is a tributary stream coming down over a spillway from the Muchattoes Lake. This tributary stream meets two other tributary streams and ends at the Hudson River. The NYSDEC stream classification for the tributary Quassiac Creek is C, indicating it supports fisheries and suitable for non-contact activities. The stream is not referred to as “protected stream” and is not subjected to the stream protection provisions of the

Protection of Water Regulations; however, during construction rock-filled cofferdam will be needed to create dry work zone along the abutments. MEG will coordinate with the NYSDEC on the construction related activities. Plans will be submitted to the NYSDEC for their review and determination if permit for stream disturbance and water quality protection will be needed. The reduction of flow cross-section inside the culvert is not significant due to the addition of a new corrugated arch plate of constant thickness of approximately 8.5 inches (5.5 inches for corrugated metal arch and 3 inches for grout space) along the inside perimeter of the structure. The scope described herein does not include a hydraulic analysis. If NYSDEC requires that a hydraulic analysis for both existing and proposed flow sections be performed, MGM will submit the scope and price for the hydraulic analysis.

MEG will identify the utility companies and notify them about the settlement that occurred in the roadway fill and replacement of the damaged sections of utility lines. Feedbacks regarding utility upgrade and modification will be coordinated with the City of Newburgh.

Activities needed to be coordinated with the Utility companies include:

- Submission of final plans for review comments and concurrence
- Incorporation of upgrades and modifications of the damaged sections proposed by the utility companies in the construction documents
- Maintaining service during construction

Task 5 – Assistance in Bidding and Design Support Services during Construction

MEG will provide procurement support services including assistance in bid evaluation and selection, coordination and review of shop drawings, response to RFIs.

FEE:

The price breakdown for the project phases and tasks included under the scope is as follows:

Task 1 – Emergency Inspection and Report (inspection has been completed):	\$19,448
Task 2 – Topographic Survey:	\$16,498
Task 3 – Final Design and Construction Documents:	\$63,519
Task 4 – Coordination with NYSDEC and Utility Companies:	\$23,526
Task 5 – Assistance in Bidding and Design Support Services during Construction:	\$26,284

Total - Direct Technical Labor \$149,276

Reimbursable Other Direct Costs:

Equipment Rental for Inspection	\$500
Reproduction, Tolls, Mileage, etc.	\$3,000
Reimbursable Total:	\$3,500

Exclusions:

Specifically excluded from this proposal are the following:

1. Geotechnical Investigation and Foundation Design
2. ROW Mapping and Surveying



3. Hydraulic Analysis
4. NYSDEC Environmental Assessment Form (EAF), ACOE Wetland and Nation Wide permits, SWPPP, NYSDEC NOI (Notice of Intent, DEC requirement if area of disturbance is greater than an acre), NYCDEP, SHPO and any other Regulatory Permits.
5. Resident Engineering and Construction inspection
6. All environmental related testing and inspection
7. Community Outreach

Additional work will be billed at the hourly rates below.

HOURLY RATES

Productive Principal	\$245/hr	Sr. CAD Operator	\$125/hr
Associate Principal	\$215/hr	CAD Operator	\$100/hr
Associate	\$185/hr	Jr. CAD Operator	\$ 75/hr
Associate Land Surveyor	\$155/hr	Chief of Field Operations	\$120/hr
Senior Engineer III/IV	\$165/hr	Diver	\$155/hr
Senior Engineer I/II	\$140/hr	Tender	\$130/hr
Technical Design Mgr.	\$155/hr	Sr. Technician	\$120/hr
Sr. Technical Designer	\$135/hr	Jr. Technician	\$ 80/hr
Staff Engineer II/III	\$120/hr	Principal Survey Technician	\$ 90/hr
Staff Engineer I	\$110/hr	Intern	\$ 58/hr
Junior Engineer	\$100/hr	Technical Typist	\$ 85/hr
Chief CAD Operator	\$135/hr		

This proposal is subject to the terms and conditions which follow and will remain valid only until July 18, 2014 unless it is accepted as a contract. Hourly rates defined above are subject to revision January 1, 2015.

Should you find this proposal acceptable, kindly sign and return one copy to serve as our contract. Work will commence upon receipt of signed contract.

Very truly yours,

The Office of

M.G. McLaren, P.C.
d/b/a McLaren Engineering Group



Malcolm G. MGM, P.E., SECB
President and CEO

cc: MGM, RLW/DFB, WJM – Internal
ACCEPTED:

City of Newburgh

Title

Date



M. G. McLAREN, P.C.

TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** M.G. MGM, P.C.d/b/a MGM Engineering Group (MEG), through and by its officers, employees and subcontractors, (hereinafter MEG) is an independent consultant and agrees to provide Owner, for its sole benefit and exclusive use, consulting services set forth in our proposal. No third party beneficiaries are intended by this agreement.
2. **PAYMENT TERMS.** Owner agrees to pay MEG's invoice upon receipt. If payment is not received within 30 days from the Owner's receipt of MEG's invoice, Owner agrees to pay a service charge on the past due amount at the greater of 1% per month or the allowable legal rate, including reasonable attorney's fees and expenses if collected through an attorney. No deduction shall be made from MEG's invoice on account of liquidated damages unless expressly included in the Agreement. Owner receipt of invoice will be presumed three days after mailing by MEG first class, with adequate postage attached. Time is of the essence for this provision.
3. **TERMINATION.** Either party may terminate this Agreement without cause upon 30 days prior written notice. This Agreement will terminate automatically upon the insolvency of Owner. In the event Owner requests termination prior to completion of the proposed services, Owner agrees to pay MEG for all reasonable charges incurred to date and associated with termination of the work, plus a termination fee of 10% of the total fee under this agreement.

If the Project is suspended for more than thirty consecutive days, for reasons other than MEG's fault, MEG shall be compensated for services performed prior to such suspension. When the project is resumed, our compensation shall be equitably adjusted.

If Owner abandons the Project for more than ninety consecutive days, MEG may terminate this Agreement by giving written notice. MEG shall be compensated for all services performed prior to such abandonment, plus 10% of MEG total fee under this Agreement, together with reimbursables then due.

4. **STANDARD OF CARE.** MEG will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of MEG's profession practicing in the same or similar locality at the time of service. No other warranty, express or implied, is made or intended by MEG's proposal or by its oral or written reports.
5. **INSURANCE.** MEG will effect and maintain insurance to protect themselves from claims arising out of the performance of professional services under this Agreement and caused by any error, omission or negligent act for which we are legally liable. MEG will maintain this insurance in force, if available, after the completion of professional services under this Agreement until the expiration of any applicable statutes of limitation. In the event there is no such statute specifically applicable to design and construction of improvements to real property, this insurance, if available, shall be maintained in force for a period of six (6) years after the date of substantial completion of the Project as agreed to.

Unless otherwise agreed, MEG will effect and maintain insurance to protect ourselves from claims under workers' or workmen's compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

The insurance required above shall be as provided below. MEG will file certificates of insurance for each type and amount upon request:

Professional Liability Insurance (Errors & Omissions), with a limit of \$2,000,000 for each claim and \$2,000,000 in the aggregate.

Comprehensive General Liability - \$1,000,000 per occurrence, \$2,000,000 Aggregate Bodily Injury and Property Damage; Blanket Contractual All Operations Completed Operations; \$1,000,000 Personal Injury A.B.C., plus \$5,000,000 Excess Liability Umbrella.

Worker's Compensation/Coverage A - Statutory/Coverage B - \$1,000,000

6. **SITE OPERATIONS.** Owner will arrange for right-of-entry with safe access to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services.

MEG will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in MEG's proposal, the Contract Sum does not include cost of restoration due to any related damage, unless such damage results directly from MEG's negligent actions. If Owner requests MEG to repair such damage, it will be done at an appropriate additional cost to be paid by Owner.

MEG shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the contractor (Work), nor shall MEG be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

7. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing MEG's services. If this occurs, MEG will promptly notify and consult with Owner, but will act based on MEG's sole judgment where risk to MEG's personnel is involved. Possible actions could include:

- a. Complete the original Scope of Services in accordance with the procedures originally intended in this Agreement, if practicable in MEG's judgment;
- b. Agree with Owner to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
- c. Terminate the services effective on the date specified by MEG in writing.

8. **DOCUMENTS.** MEG will furnish Owner the agreed upon number of written reports and supporting documents. These instruments of service are furnished for Owner's exclusive internal use and reliance, use of Owner's counsel and for regulatory submittal in connection with the project provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

- a. All documents including paper documents and electronic files generated by MEG under this Agreement shall remain the sole property of MEG. Any unauthorized use or distribution of MEG's work shall be at Owner's sole risk and without liability to MEG.
- b. If Owner desires to release, or for MEG to provide, our documents to a third party not described above for that party's reliance, MEG will agree to such release provided MEG receives written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement. Documents provided for disclosure of information only will not require separate agreement. Owner acknowledges and agrees to inform such third party that MEG's documents reflects conditions only at the time of the study and may not reflect conditions at a later time. Owner further acknowledges that such request creates potential conflict of interest for MEG and by this request Owner waives any such claim if MEG complies with the request.
- c. Owner agrees that all documents furnished to Owner or Owner's agents or designees, if not paid for will be returned upon demand and will not be used by Owner or any other entity for any purpose whatsoever. Owner further agrees that documents produced by MEG pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without MEG's prior written approval.

- d. Owner shall furnish documents or information reasonably within Owner's control and deemed necessary by MEG for proper performance of our services. MEG may rely upon Owner-provided documents in performing the services required under this Agreement; however, MEG assumes no responsibility or liability for their accuracy. Owner-provided documents will remain the property of Owner, but MEG may retain one confidential file copy as needed to support our report.
9. **CLAIMS.** The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.
10. **OPINIONS OF COST.** If included in our scope of services, MEG will use its best efforts and experience on similar projects to provide realistic opinions of costs for remediation or construction as appropriate based on reasonably available data, MEG's designs or MEG's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation. Owner understands actual costs of such work depend on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond MEG's control.
11. **TESTIMONY.** Should MEG or any MEG employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing or trial, in relation to services provided under this Agreement, and MEG is not a party in the dispute, then MEG shall be compensated by Owner for the associated reasonable expenses and labor for MEG's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides MEG such compensation, Owner will receive a credit or refund on any related double payments to MEG.
12. **CONFIDENTIALITY.** MEG will maintain as confidential any documents or information provided by Owner and will not release, distribute or publish same to any third party without prior permission from Owner, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Owner.
13. **PRIORITY OVER FORM AGREEMENTS/PURCHASE ORDERS.** The Parties agree that the provisions of these terms and conditions shall control over and govern as to any form writings signed by the Parties, such as Owner Purchase Orders, Work Orders, etc., and that such forms may be issued by Owner to MEG as a matter of convenience to the Parties without altering any of the terms or provisions hereof.
14. **SURVIVAL.** All provisions of this Agreement for indemnity or allocation of responsibility or liability between Owner and MEG shall survive the completion of the services and the termination of this Agreement.
15. **SEVERABILITY.** In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.
16. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior permission of the other.
17. **INTEGRATION.** This agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.
18. **LIMIT OF LIABILITY**
- A. In the event Owner consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved in writing by MEG, the Owner recognizes that such changes and the results thereof are not the responsibility of MEG. Therefore, the Owner agrees to release MEG from any liability arising from the construction, use or result of such changes. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the design Professional and all his employees, officers, and directors harmless from any damage, liability or cost (including

reasonable attorneys' fees and costs of defense) arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of MEG or its employees, officers or directors.

- B. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or MEG. MEG's services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against MEG because of this Agreement or the performance or nonperformance of services hereunder. The Owner agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.
- C. The Owner agrees to limit MEG's liability and his or her consultants to the Owner and to all Construction Contractors and Subcontractors on the project, due to MEG's negligent acts, errors, or omissions, such that the total aggregate liability of MEG to all those named, including legal fees and costs, shall not exceed \$100,000.

The Owner shall make no claim for professional negligence, either directly or in a third party claim, against MEG unless the Owner has first provided MEG with a written certification executed by an independent design professional currently practicing in the same discipline as MEG and licensed in the State of this project. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an Engineer performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to MEG not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation or judicial proceeding.

- D. The Owner shall promptly report to MEG any defects or suspected defects in MEG's work or services of which the Owner becomes aware, so that MEG may take measures to minimize the consequences of such a defect. Failure by the Owner, and the Contractors or Subcontractors to notify MEG, shall relieve MEG of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- E. Payments to MEG shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of offsetting reimbursement or credit from other parties causing Additional Services or expenses. No withholdings, deductions or offsets shall be made from MEG's compensation for any reason unless MEG has been found to be legally liable for such amounts.
- F. If, due to MEG's error, any required item or component of the project is omitted from MEG's construction documents, MEG shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will MEG be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.
- G. All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after three (3) years have passed from the date MEG concluded rendering professional services, issuance of the Certificate of Completion or Certificate of Occupancy, whichever is sooner, unless MEG's services shall be terminated earlier, in which case the date of termination of this Agreement shall be used.
- H. It is intended by the parties to this Agreement that MEG's services in connection with the project shall not subject MEG's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against MEG, a New York corporation, and not against any of MEG's employees, officers or directors.

- I. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental, indirect, or consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of implied warranty. Both the Owner and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

- J. Because evaluation of the existing structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions cannot be verified without expending additional sums of money or destroying otherwise adequate or serviceable portions of a structure, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold MEG harmless from and against any and all damage, liability and cost, including reasonable attorneys' fees and defense costs, arising or allegedly arising out of the professional services under this Agreement, except for the sole negligence or willful misconduct of MEG.

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RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH CSX TRANSPORTATION, INC. TO ALLOW THE CITY AND ITS CONTRACTORS ACCESS TO CSX PROPERTY FOR THE PURPOSE OF REPAIRING THE COMBINED SEWER OVERFLOW OUTFALL NO. 12

WHEREAS, by Resolution No. 154-2013 of July 15, 2013, the City Council of the City of Newburgh, New York authorized the Interim City Manager to retain the services of a qualified engineering firm and contractor to investigate and evaluate the immediate problems with Combined Sewer Overflow ("CSO") Outfall No. 12 and to determine the necessary work to stabilize and repair the CSO Outfall No. 12; and

WHEREAS, Stantec Consulting Services, Inc. was retained by the City and investigated the problem and provided an Engineering Opinion of Probable Cause of CSO Outfall No. 12, as well as Recommendations and Opinion of Probable Costs for the design, permitting and construction costs of the necessary stabilization; and

WHEREAS, by Resolution No. 201-2013 of September 23, 2013, the City Council of the City of Newburgh, authorized the Interim City Manager to execute a contract extension with Stantec Consulting Services, Inc. for professional services in connection with the design and permitting phase of the repair to the CSO Outfall No. 12; and

WHEREAS, CSX Transportation, Inc. ("CSX") requires the City to enter into a license agreement to perform the repair work on property owned or controlled by CSX and the funding for the license agreement fee shall be derived from G.8120.448; and

WHEREAS, the City has obtained all other necessary and required permits and approvals from the New York State Department of Environmental Conservation and CSX Railroad to undertake the necessary repairs to CSO Outfall No. 12; and

WHEREAS, this Council finds that entering into a license agreement with CSX in order to facilitate the repairs to CSO Outfall No. 12 is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that the City Manager is hereby authorized to execute a license agreement with CSX Transportation, Inc., in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, in order to facilitate repairs to the CSO Outfall No. 12.

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective June 18, 2014, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF NEWBURGH, a municipal corporation, political subdivision or state agency, under the laws of the State of New York, whose mailing address is 83 Broadway, Newburgh, New York 12550, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) existing fifteen inch (15") diameter pipeline crossing, solely for the conveyance of stormwater, located at or near Newburgh, Orange County, New York, Albany Division, River Subdivision, Valuation Station 3040+40, Milepost QR-57.59, N:..W:;
2. One (1) existing twenty-four inch (24") diameter sub-grade pipeline crossing, solely for the conveyance of stormwater, located at or near Newburgh, Orange County, New York, Albany Division, River Subdivision, Valuation Station 3040+35, Milepost QR-57.59, Latitude N41:30:50.00, Longitude W74:00:22.59;
3. Three (3) manholes located at or near Newburgh, Orange County, New York, Albany Division, River Subdivision, Valuation Station 3040+35, Milepost QR-57.59, Latitude N41:30:50.00, Longitude W74:00:22.59;

hereinafter, collectively, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;
- (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
- (C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached plan(s).

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of TEN THOUSAND AND 00/100 U.S. DOLLARS (\$10,000.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (A.R.E.M.A. Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations,

requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence,

operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against CSXT and its Affiliates;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;

(iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any

railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

(B) At Licensor's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor (CSXT Form 7422).

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

11.3 Subject to Licensor's consent and to Licensor's Railroad Operating Rules and labor agreements, Licensee may provide flagmen, watchmen, inspectors or supervisors during all times of construction, repair, maintenance, replacement or removal, at Licensee's sole risk and expense; and in such event, Licensor shall not be liable for the failure or neglect of such watchmen, flagmen, inspectors or supervisors.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the

time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall complete and submit Licensor's Outside Party Number Request Form (Form # OP) by facsimile, to facsimile numbers: (904) 245-3692. Licensee may also scan and email a completed form to email address: OP_Request@csx.com. A blank form, as well as additional instructions and information, can be obtained from Licensor's web site, via web link:
http://www.csx.com/share/wwwcsx_mura/assets/File/Customers/Non-freight_Services/Property_Real_Estate/Outside_Party_Number_Request_Form.pdf.

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 845-569-7300.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Licensor shall refund to Licensee any overpayments collected, plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

19. **RESERVED:**

20. **RESERVED:**

21. **RIDERS:**

21.1 The following Rider(s) is/are herewith attached and included herein:

Telecommunication Cable or Fiber Optic Line

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

CITY OF NEWBURGH

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____

Dated _____

COMMUNICATIONS CABLE OR FIBER OPTIC LINE PROTECTION RIDER

This Rider is and shall be a part of Agreement No. CSX766132, and is incorporated therein.

1. No construction of any type pursuant or related in any way to this Agreement shall be commenced by Licensee, or by any agent, representative, contractor, subcontractor of Licensee, without Licensee first giving at least thirty (30) days written notice to the following Parallel Cable Occupier(s):

("MCI") ATTN: Investigations
Mr. Dean Boyers
Worldcom/MCI Telecommunications Corporation
2400 North Glenville Drive
Richardson, TX 75082-4354
Phone No. (800) 624-9675
 or (972) 729-6016

(NOTE: WRITTEN NOTICE TO MCI IS ALSO REQUIRED)

2. The notice shall be accompanied by drawing(s) showing the general plan, elevation, details and methods of Licensee's proposed construction, and the location of Occupier(s)' cable or facilities in relation to Licensee's proposed construction.

3. Prior to any construction, Licensee must locate and identify, any existing cable, wire or fiber optic line (including any appurtenances thereto) of said cable occupier(s) traversing or located in, on, or immediately adjacent to the proposed Crossing, at Licensee's sole risk.

4. Any changes, alteration, relocation or protection of wire(s), cable(s) or facilities of such Occupier(s), required by said Occupier(s), shall be at Licensee's sole expense except as otherwise negotiated between Licensee and said Occupier(s).

5. Licensee shall be solely responsible and liable for any damage to (e.g., cutting, dislocating, etc.) said wire(s) or cable(s), and appurtenances thereto, resulting in any way from Licensee's exercise of rights or privileges under this Agreement.

6. Licensee shall defend, indemnify and hold Licensor harmless from any such damage claims and any relocation or protection costs of said Occupier(s).

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION AMENDING RESOLUTION NO: 247 - 2013,
THE 2014 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$95,898.00 FROM SPECIAL ITEMS - CONTINGENCY
TO SANITARY SEWER - OTHER SERVICES
TO PROVIDE NECESSARY FUNDING IN CONNECTION
WITH COLLAPSED SEWER LINES

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 247-
2013, the 2014 Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
G.8120	Sanitary Sewer		
.0448	Other Services		\$95,898.00
G.1900	Special Items		
.1990	Contingency	\$95,898.00	
	<u>Total</u>	\$95,898.00	\$95,898.00

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO AN AGREEMENT FOR PROFESSIONAL ENGINEERING DESIGN AND
CONSTRUCTION SERVICES WITH MASER CONSULTING, P.A. IN CONNECTION
WITH THE REHABILITATION OF THE BASKETBALL COURTS LOCATED
IN THE DELANO-HITCH RECREATION PARK**

WHEREAS, the City of Newburgh solicited proposals for professional engineering services for the design and construction administration in connection with the Delano-Hitch Recreation Park Basketball Court Rehabilitation Project; and

WHEREAS, Maser Consulting, P.A. has submitted a proposal for design services and to prepare plans and specifications, bid documents and a construction administration; and

WHEREAS, the cost for these services will be \$9,950.00 and funding shall be derived from CD.8686.0448.0010; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to accept a proposal and enter into an agreement with Maser Consulting, P.A. for professional design and construction administration engineering services for the Delano-Hitch Recreation Park Basketball Court Rehabilitation Project.



Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

1607 Route 300, Suite 101
Newburgh, NY 12550
T: 845.564.4495
F: 845.564.0278
www.maserconsulting.com

July 28, 2014

VIA E-MAIL

Mr. Derrick Stanton
Recreation Director
City of Newburgh
401 Washington Street
Newburgh, NY 12550

Re: Proposal for Engineering Design and Construction Services
Delano-Hitch Park
Basketball Court Rehabilitation
MC Proposal No. 14001324P

Dear Mr. Stanton:

Maser Consulting P.A. is pleased to provide our proposal to perform professional engineering services for the proposed basketball court rehabilitation project at Delano-Hitch Park. Based on our discussion and site visit we understand your project goals and objectives are to rehabilitate the three (3) basketball courts at the south western side of the park. This would include a new playing surface, court markings, hoops and fencing. We are sensitive to your available budget for the project and shall seek to design a cost effective solution for the proposed improvements.

This proposal is divided into four sections as follows:

- Section I – Scope of Services
- Section II – Business Terms and Conditions
- Section III – Technical Staff Hourly Rate Schedule
- Section IV – Client Contract Authorization

The following scope of services has been separated into phases so that it may be more easily reviewed. The order in which the phases are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Maser Consulting to meet project schedules.



SECTION I – SCOPE OF SERVICES

PHASE 1.0 DESIGN DOCUMENTS

Maser Consulting proposes to conduct a site visit and collect existing conditions data (i.e. dimensions of the existing basketball playing surface, drain inlet locations, location of cracks in the court surface and existing hoop locations) to generate a basemap of the project site.

Utilizing the basemap described above, Maser Consulting shall prepare a proposed rehabilitation plan for the three (3) court playing surface. Based on our site visit it appears that the existing surface will not need replacement and a pavement overlay will be sufficient. The plan will depict the proposed remediation of the existing surface cracks, proposed pavement overlay for the extent of the existing court surface, locations for new basketball hoops and a proposed perimeter fence. Each of the improvements will have an associated construction detail and proposed manufacturer (as applicable). If the client has a preferred vendor/manufacturer for any of the improvements, these can be utilized for the details.

In addition to the design plans, Maser Consulting shall prepare a set of written specifications to adequately describe the work and for use during contractor bidding. We shall also prepare one estimate of the construction costs.

Phase 1.0 Lump Sum Fee **\$ 4,250.00**

PHASE 2.0 DESIGN MEETINGS

Attendance at any agency and project coordination (including with the client) meetings will be billed hourly in accordance with the Schedule of Hourly Rates in effect at the time the meeting is held. Time spent preparing for meetings will be billed hourly in accordance with the Schedule of Hourly Rates in effect at the time the service is completed.

Phase 2.0 Estimated Fee (Task to be billed hourly) **\$ 900.00**

PHASE 3.0 CONSTRUCTION ADMINISTRATION SERVICES

- Bidding Assistance – Maser Consulting shall provide the City of Newburgh with bid packages consisting of design plans, written specifications and a quantity takeoff sheet for bidders use. The upfront bidding documents shall be prepared by the City of Newburgh. The quantity of bid packages shall be billed in accordance with our attached printing/reproductions fee schedule.

Maser Consulting shall address bidders questions by issuing addenda, as may be required. We shall receive all bids, provide a tally, check references and recommend a winning bidder to the City of Newburgh.



Phase 3.0A Lump Sum Fee for Bid Assistance **\$ 750.00**
Estimated Printing Cost **\$ 500.00**

- Review of Shop Drawings – We have assumed our review of five (5) shop drawing submittals. Shop drawings submitted for review and returned approved, approved as noted or rejected count towards one shop drawing submittal.

Phase 3.0B Lump Sum Fee **\$ 750.00**

- Construction Site Meetings - We have assumed two (2) construction site meetings per week for this task as requested by the City of Newburgh during the estimated four (4) week construction period. The site meetings will be billed hourly (estimated per-meeting fee is \$300).

Phase 3.0C Estimated Fee **\$ 2,400.00**

PHASE 4.0 PLAN REVISIONS AND ADDITIONAL SERVICES

Services accomplished under this phase will be billed hourly in accordance with the Schedule of Hourly Rates in effect at the time the service is accomplished and will include revisions or extra services requested by the various review agencies and/or the client that differ from the original scope of service, or revisions required as conditions of approval and are not an error or omission on the part of Maser Consulting. Additional services will not be advanced without providing notice to you of the need for additional services and obtaining your approval of the additional scope of services and fees.

Phase 4.0 Fee **Hourly**

SCHEDULE OF FEES

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services.

PHASE 1.0	DESIGN DOCUMENTS	\$ 4,250.00
PHASE 2.0	DESIGN MEETINGS (ESTIMATED)	\$ 900.00
PHASE 3.0A	BIDDING ASSISTANCE	\$ 750.00
	ESTIMATED PRINTING COST	\$ 500.00
PHASE 3.0B	REVIEW OF SHOP DRAWINGS	\$ 750.00
PHASE 3.0C	CONSTRUCTION SITE MEETINGS	\$ 2,400.00
PHASE 4.0	PLAN REVISIONS AND ADDITIONAL SERVICES	Hourly

This Contract and Fee Schedule are based upon the acceptance of Maser Consulting's Business Terms and Conditions contained in Section II of this Contract. Delivery, printing and reproduction, overnight mail service and postage costs are not included in the lump sum fees and will be added to each monthly invoice.



EXCLUSIONS AND UNDERSTANDINGS

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement:

- Services not specifically outlined above in the Scope of Services sections;
- Field survey services;
- Drainage improvement design or detailing;
- Geotechnical Engineering;
- Structural Engineering;
- Construction stake-out or as-built plans;
- Exploratory or testing work, interpretations or conclusions related to determination of potential chemical, toxic, radioactive or other type of contaminants on the site;
- Application fees and escrow deposits to any regulatory review agencies;
- Changes or revisions beyond our control or changes in basic concept after design service has been accomplished; and
- Substantial plan revisions, changes, or preparation of additional design support requested by regulatory agencies during the course of project review.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary Maser Consulting may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees with regard to the extra services.



SECTION II – BUSINESS TERMS AND CONDITIONS

Maser Consulting P.A. agrees to provide professional services under the following terms and conditions:

The term Client referenced herein is the person, persons, corporation, partnership, or organization referenced in the proposal between Maser Consulting P.A. and said Client.

1.0 SCOPE OF SERVICES:

Services not set forth in the Scope of Services, are excluded from the Scope of Services, and Maser Consulting P.A. will assume no responsibility to perform such services under the base contract. In situations where a written contract is not executed or where additional services becomes necessary during the course of the project, Maser Consulting P.A. may provide such services using our Technical Staff Hourly Rate Schedule in effect at the time of services. The hourly rates listed in our Technical Staff Hourly Rate Schedule are adjusted semi-annually and the Client shall be billed at the rates that are in effect at the time of service.

Since there are substantial costs to stop and restart a project once it is underway, should a project's progress be halted at any time by the client, for any reason, Maser Consulting P.A. reserves the right to charge a restart fee and/or to renegotiate the remaining fees within the contract.

These Business Terms and Conditions are applicable for any additional professional services rendered for this project including, but not limited to, change orders, client service authorization forms, etc.

2.0 STANDARD OF CARE:

In performing services, we agree to exercise professional judgment, made on the basis of the information available to us, and to use the same degree of care and skill ordinarily exercised in similar circumstances and conditions by reputable consultants performing comparable services in the same locality. This standard of care shall be judged as of the time the services are rendered, and not according to later standards. Reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment shall not excuse a Client from paying for services rendered. NO OTHER REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IS MADE.

3.0 INVOICES:

Maser Consulting P.A. bills its Clients on a monthly basis using a standard invoice format. This format provides for a description of services performed and a summary of professional fees, expenses, and other charges. For more detailed invoicing requests, Maser Consulting P.A. reserves the right to charge for invoice preparation time by staff members. Monthly invoices will be submitted based upon percentage of services completed and reimbursable expenses. Any comments or discrepancies, relative to invoices shall be submitted in writing within fourteen (14) days or the account will be considered correct.

For professional services billed on an hourly basis, Maser Consulting P.A. reserves the right to invoice all overtime services performed by our employees using our Technical Staff Hourly Rate Schedule in effect at the time of services at ONE AND ONE-HALF TIMES our standard hourly rate for those employees.

Expenses incurred for services, equipment, and facilities not furnished by Maser Consulting P.A. are charged to the Client at cost plus an up-charge not to exceed 20 percent of the invoice for said services.

Client shall pay Maser Consulting P.A. for reimbursable expenses, including, but not limited to, application fees, printing and reproduction, courier and express delivery service, special/overnight mailings, facsimile transmissions, specialized equipment and laboratory charges, and costs of acquiring materials specifically for the Client. Reimbursable charges will be added to each monthly invoice and are part of Client's responsibility.

4.0 PAYMENT:

Maser Consulting P.A. bills are payable in full UPON RECEIPT and **payment is expected within thirty (30) days**. We reserve the right to assess a late charge of 1.5 percent per month for any amounts not paid within 45 days of the billing date. In the event payment is not made according to the terms and conditions herein, the matter may proceed to an attorney for collection. Client shall be responsible for court costs and reasonable attorney fees.

In addition, where payment is not received in accordance with the terms of this contract, Maser Consulting P.A. reserves the right to withdraw any applications to federal, state, or local regulatory agencies / boards filed on behalf of the client with the understanding that these applications are the property of Maser Consulting P.A. Maser Consulting P.A. will provide you with written notification two (2) weeks prior to taking any action to withdraw an application submitted on behalf of the client. If payment of all outstanding invoices is not received within two (2) weeks of receipt of this letter, Maser Consulting P.A. will withdraw all pending applications for the project.

5.0 RETAINER:

Maser Consulting P.A. reserves the right to request a retainer from the Client prior to the commencement of services on a project. While retainers are collected prior to the start of a project, the retainer is held to the end of the project, and will be applied to the final invoices. Retainers are not applied to the beginning of the project.

6.0 RIGHT OF ENTRY/JOBSITE:

Client will provide for right of entry for Maser Consulting P.A. personnel and equipment necessary to complete our services. While Maser Consulting P.A. will take all reasonable precautions to minimize any damage to the property, it is understood by the Client that in the normal course of our services some damage may occur, the correction of which is not part of this Agreement.

Client shall furnish or cause to be furnished to Maser Consulting P.A. all documents and information known to the Client that relate to the identity, location, quantity, nature or characteristics of any hazardous or toxic substances at, on, or under the site. In addition, the Client will furnish or cause to be furnished such other information on surface and subsurface site conditions required by Maser Consulting P.A. for proper performance of its services. Maser Consulting P.A. shall be entitled to rely on the accuracy and completeness of Client provided documents and information in performing the services required under this Agreement and Maser Consulting P.A. assumes no responsibility or liability for their accuracy or completeness.

Maser Consulting P.A. will not direct, supervise, or control the work of Client's contractors or their subcontractors. Maser Consulting P.A. shall not have authority over or responsibility for the construction means, methods, techniques, sequences, or procedures and Maser Consulting P.A.'s services will not include a review or evaluation of the contractors (or subcontractor's) safety precautions, programs or measures.

Maser Consulting P.A. shall be responsible only for its activities and that of its employees on any site. Neither the professional activities nor the presence of Maser Consulting P.A. or its employees or subcontractors on a site shall imply that Maser Consulting P.A. controls the operations of others, nor shall this be construed to be an acceptance by Maser Consulting P.A. of any responsibility for jobsite safety.



7.0 UTILITIES:

In the execution of our services, Maser Consulting P.A. will take reasonable precautions in accordance with the professional standard of care to avoid damage or injury to subterranean structures or utilities. The Client agrees to hold Maser Consulting P.A. harmless and defend and indemnify Maser Consulting P.A. for any claims or damages to subterranean structures or utilities, which have not been marked-out under the One-Call system or are not shown or are incorrectly shown on the plans furnished.

8.0 TERMINATION OR SUSPENSION OF SERVICES:

Should Client fail to make payments when due or is otherwise in material breach of this Agreement, Maser Consulting P.A. at their election may suspend services at any time after PROVIDING WRITTEN NOTICE TO THE CLIENT until payments are brought current. Maser Consulting P.A. shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension and the Client agrees to indemnify and hold Maser Consulting P.A. harmless from any claim or liability resulting from such suspension.

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Maser Consulting P.A. shall be paid for service performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months, prior to completion of all services contemplated by the Agreement, Maser Consulting P.A. may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of Maser Consulting P.A. in completing such analyses, records and reports.

9.0 SUBCONTRACTORS:

Maser Consulting P.A. prefers that its Clients directly retain other contractors whose services are required in connection with field services for a project (e.g., drillers, analytical laboratories, transporters, etc.), except in unusual circumstances. As a service, we will advise Clients with respect to selecting other such contractors and will assist Clients in coordinating and monitoring their performance. In no event will we assume any liability or responsibility for the work performed by other contractors, or for their failure to perform any work, regardless of whether we hire them directly as subcontractors, or only coordinate and monitor their work. When Maser Consulting P.A. does engage a subcontractor on behalf of the Client, the expenses incurred, including rental of special equipment necessary for the work, will be billed as they are incurred, at cost plus an up-charge not to exceed 20 percent of the invoice. By engaging us to perform services, you agree to defend, indemnify and hold Maser Consulting P.A. its directors, officers, employees, and other agents harmless from and against any and all claims, losses, liabilities, damages, demands, costs, or judgments arising out of or relating in any way to the performance or non-performance of work by another contractor or subcontractor. In addition, Client agrees to pursue recovery of and assert any claims based upon its loss, expenses and/or damages solely and directly against those contractors or subcontractors. In consideration of such indemnity and waiver, Maser Consulting P.A. agrees to assign its rights and/or claims against those contractors or subcontractors pursuant to the contractors' or subcontractors' agreements with Maser Consulting P.A. to the Client.

10.0 AGREED REMEDY:

Maser Consulting P.A. shall be liable to the Client only for direct damages to the extent caused by Maser Consulting P.A.'s negligence in the performance of its services. UNDER NO CIRCUMSTANCES SHALL MASER CONSULTING P.A. BE LIABLE FOR INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, OR FOR DAMAGES CAUSED BY THE CLIENT'S FAILURE TO PERFORM ITS OBLIGATIONS. With regard to services involving hazardous substances, Maser Consulting P.A. has neither created nor contributed to the creation or existence of any actually or potentially hazardous, radioactive, toxic, or otherwise dangerous substance or condition at any site, and its compensation is in no way commensurate with the potential liability that may be associated with a substance or site.

To the fullest extent permitted by law, the total liability, in the aggregate, of Maser Consulting P.A. and Maser Consulting P.A.'s officers, directors, employees, agents and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of in any way related to Maser Consulting P.A.'s services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Maser Consulting P.A. under this Agreement, not including reimbursable expenses and any subconsultant fees rendered on the project.

It is intended by the parties to this Agreement that Maser Consulting P.A.'s services in connection with the project shall not subject Maser Consulting P.A.'s individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Maser Consulting P.A., a New Jersey corporation, and not against any of Maser Consulting P.A.'s employees, officers or directors.

11.0 LIABILITY TO THIRD PARTIES:

The Client agrees to be solely responsible for, and to defend, indemnify, and hold Maser Consulting P.A. harmless from any and all liabilities, claims, damages and costs (including reasonable attorney's fees and defense costs) by third parties arising out of, or in any way related to, our performance or non-performance of services, except claims for personal injury, death, or personal property damage to the extent caused by the sole negligence, gross negligence or willful misconduct of employees of Maser Consulting P.A.

12.0 INDEMNIFICATION:

Maser Consulting P.A. shall maintain, at its own expense, Workers Compensation Insurance, Comprehensive General Liability Insurance and Professional Liability Insurance at all times and will, upon request, furnish insurance certificates to the Client.

To the fullest extent permitted by law, Client shall indemnify, defend and hold harmless Maser Consulting P.A. and its agents, officers, directors and employees, subcontracts or consultants (herein for the remainder of this section collectively referred to as Maser Consulting) from and against all claims, damages, losses and expenses, whether direct, indirect or consequential or punitive, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the services of Maser Consulting or any claims against Maser Consulting arising from the acts, omissions or work of others, unless it is proven in a court of competent jurisdiction that Maser Consulting is guilty of negligence, gross negligence, or willful misconduct in connection with the services and such negligence, gross negligence, or willful misconduct was the sole cause of the damages, claims, and liabilities.

Client agrees to defend, indemnify and hold harmless Maser Consulting from and against all claims, damages, losses and expenses, direct or indirect, and consequential damages, including but not limited to fees and charges of attorneys and court, and arbitration costs, brought by any person or entity, or claims against Maser Consulting which arise out of, are related to, or are based upon, the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids,



alkalis, toxic chemical, radioactive materials, liquids, gases, or any other material, upon it or into the surface or subsurface soil, water or watercourse, objects, or any tangible or intangible matter.

To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence breach of warranty or contract, or strict liability of Maser Consulting. This indemnification shall not apply to claims, damages, losses, or expenses which are determined by a court of competent jurisdiction to be the sole result of negligence or willful misconduct by Maser Consulting of obligations under this Agreement.

13.0 ASSIGNS:

The Client may not delegate, assign, sublet, or transfer his duties or interest in the Agreement without written consent of Maser Consulting P.A. Maser Consulting P.A. shall not, in connection with any such assignment by the Client, be required to execute any documents that in any way might, in the sole judgment of Maser Consulting P.A., increase Maser Consulting P.A.'s contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.

The Agreement shall not create any rights or benefits to parties other than the Client and Maser Consulting P.A., and nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Maser Consulting P.A. Maser Consulting P.A.'s services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Maser Consulting P.A. because of this Agreement of Maser Consulting P.A.'s performance or nonperformance of services hereunder.

14.0 OWNERSHIP AND RESTRICTION ON REUSE OF DOCUMENTS:

All drawings, calculations, reports, plans, specifications, computer files, field data, notes, and other documents and instruments ("Documents") prepared by Maser Consulting P.A. are and remain the property of Maser Consulting P.A. as instruments of service. The Documents may not be copied by the Client or others on extensions of this project or on any other project. The Client agrees not to use Maser Consulting P.A.'s Documents for marketing purposes, for projects other than the project for which the Documents were prepared by Maser Consulting P.A., or for future modifications to this project, without Maser Consulting P.A.'s express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Maser Consulting P.A. will be at the Client's sole risk and without liability to Maser Consulting P.A. or its employees, subsidiaries, independent professional associates, sub consultants, and subcontractors. The Client shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Maser Consulting P.A. from and against any and all expenses, fees, demands, liabilities, suits, actions, claims, damages or losses including attorneys' fees and costs, arising out of or resulting from such unauthorized distribution or reuse of Documents.

Computer files are not considered part of deliverables unless specifically requested or required by the signed contract. If computer files are required, Maser Consulting P.A. shall provide Client files subject to the following conditions:

The Client must execute our standard Electronic Media Release form prior to any distribution of files. The Client recognizes that data, plans, specifications, reports, documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration, either intentional or unintentional due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, it is understood that electronic files provided to the Client are for informational purposes only and are not intended as an end-product. Maser Consulting P.A. makes no representation of any warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the Client agrees to waive any and all claims against Maser Consulting P.A. and Maser Consulting P.A.'s consultants relating in any way to the unauthorized use, reuse or alteration of the electronic documents. Any unlicensed use or reuse of the documents without our written consent will constitute a violation of our copyright. Only original plans and reports of the most recent date bearing the signature and the embossed seal of the professional will be considered documents of record.

Maser Consulting P.A., shall maintain in its storage facility, samples collected as part of their services provided for a period of three (3) months after issuance of final reports. After the three (3) month time limit, all samples will be disposed of in accordance with appropriate regulations at the time. Extended storage of samples can be arranged at an additional cost to be established on a project by project basis.

15.0 GENERAL CONDITIONS:

Maser Consulting P.A. shall not be responsible for the delays caused by factors beyond its reasonable control, including but not limited to delay due to accidents, an act of God, fire, hurricane, flood, explosions, strike, boycott or other labor dispute, failure of the Client to furnish timely information or approve or disapprove of Maser Consulting P.A.'s services or work product, delays caused by faulty performance by the Client or contractors of any level, or by acts of Government, which, in the opinion of Maser Consulting P.A., could not have been reasonably foreseen and provided for, such delay will entitle Maser Consulting P.A. to an extension of time in performing its Services. If there is any increase in the total cost of providing Services by reason of any such delay, Maser Consulting P.A. will notify Client of particulars, and Client will pay for such increase. When such delays beyond Maser Consulting P.A.'s reasonable control occur, the Client agrees that Maser Consulting P.A. shall not be responsible for damages, nor shall Maser Consulting P.A. be deemed in default of this Agreement.

The fees quoted in this proposal assume that upon authorization, this project will commence through to completion without a stop work order from the Client. Should a stop work order be received from the Client before completion of the project or any task, additional fees may be required to restart the project.

16.0 ENTIRE AGREEMENT:

This Agreement comprises the final and complete Agreement between the Client and Maser Consulting P.A. It supersedes all prior or contemporaneous communications, representations, or Agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had the opportunity to have questions explained by independent counsel and is satisfied with the terms and conditions contained herein. Amendments to this Agreement shall not be binding unless made in writing and signed by both the Client and Maser Consulting P.A.

To the extent Client provides its own Agreement and that Agreement conflicts with or is silent with respect to any term or condition expressed herein, these conditions shall prevail and shall be binding upon the parties.



SECTION III – 2014 RATE SCHEDULE

TECHNICAL STAFF RATES

BILLING TITLES	HOURLY RATES
Principal.....	195.00
Senior Technical Director.....	190.00
Senior Project Professional.....	185.00
Senior Project Manager.....	175.00
Project Professional.....	170.00
Technical Director.....	160.00
Project Manager.....	155.00
Senior Project Specialist.....	145.00
Senior Technical Professional.....	140.00
Project Specialist.....	135.00
Senior Technical Specialist.....	130.00
Technical Professional.....	125.00
Senior Specialist.....	120.00
Technical Specialist.....	110.00
Specialist.....	100.00
Senior Data Technician.....	95.00
Senior Technical Assistant.....	85.00
Technical Assistant.....	75.00
Data / Field Technician.....	65.00
Survey Crew – 2 Man.....	200.00
Survey Crew – 1 Man.....	170.00
Expert.....	250.00
Sr. LSRP.....	225.00
LSRP.....	190.00

REIMBURSABLE EXPENSES

General Expenses.....	Cost + 15%
Mileage Reimbursement*.....	0.55 / Per Mile
Travel (Hotel, Airfare, Meals).....	Cost
Printing.....	2.85 / Each
Computer Mylars / Color Plots.....	40.00 / Each
Color Copies.....	1.50 / Each
Document Binding.....	3.00 / Each
Compact Disk CD/DVD.....	45.00 / Each
Bulk Printing.....	Cost
Sub-Consultants/Sub-Contractors.....	Cost + 15%

* Mileage reimbursement subject to change based upon IRS standard mileage rate.



SECTION IV – CLIENT CONTRACT AUTHORIZATION

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

Signature

Date

Printed Name

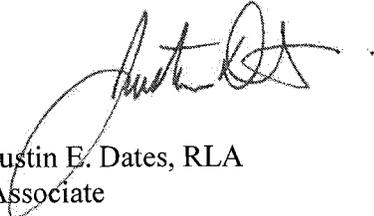
Title

If you find this proposal acceptable, please sign where indicated above in Section IV, and return one signed copy of this contract to this office. Invoices are due within 30 days. This proposal is valid for 60 days.

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Very truly yours,

MASER CONSULTING P.A.



Justin E. Dates, RLA
Associate

ABF/jm

cc: Leo Ponzio, Maser Consulting

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION SUPPORTING A FOUR YEAR CYCLICAL REASSESSMENT PLAN
AND AUTHORIZING THE CITY MANAGER AND CITY ASSESSOR TO APPLY FOR
AND ACCEPT IF AWARDED AID FOR CYCLICAL ASSESSMENTS
FROM THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES

WHEREAS, in 2008, the City of Newburgh implemented a cyclical plan to reassess real property at 100% of market value in a 6 year interval; and

WHEREAS, New York State provides financial aid to municipalities that reassess at 100% of market value on a cyclical basis in an amount of up to \$5.00 per parcel in reappraisal years and up to \$2.00 per parcel in non-reappraisal years to the extent such funding is available; and

WHEREAS, to be eligible for the State Aid for Cyclical Reassessments, the City of Newburgh is required to submit a plan for future reassessments that includes reassessments at 100% of market value and implemented pursuant to an approved plan with a minimum 4 year interval; revaluations or reappraisals at least once every 4 years; reassessments conducted in the first and last years of the plan; inventory collection at least once every 6 years; and provision of a set of supporting valuation documents and files; and

WHEREAS, under the 2008 cyclical reassessment plan, a reappraisal is required in 2014 and the submission of a cyclical assessment plan for future reassessments is required to receive future funding under the Aid for Cyclical Reassessments program; and

WHEREAS, the City Assessor proposes to apply for State Aid for Cyclical Reassessments and submit a 4-year cyclical reassessment plan with 2014 being the first year of the plan; and

WHEREAS, the City Council has determined that continuing with cyclical reassessment at 100% of market value and implementing a 4-year cyclical reassessment plan with 2014 as the first year of the plan is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Assessor of the City of Newburgh is hereby authorized to implement a 4-year cyclical assessment plan with 2014 being the first year; and

BE IT FURTHER RESOLVED, by the City Council of the City of Newburgh that the City Manager and the City Assessor are hereby authorized to apply for and accept if awarded State Aid for Cyclical Assessments from the New York State Department of Taxation Office of Real Property Tax Services.

RESOLUTION NO.: _____ - 2014

OF

SEPTEMBER 8, 2014

A RESOLUTION TO EXPRESS CONCERNS ABOUT TRANSPORTING CRUDE OIL BY RAIL, BARGE AND SHIP AND CALLING UPON FEDERAL AND NEW YORK STATE AGENCIES TO PROTECT THE PUBLIC BY ENACTING STRINGENT RULES AND REGULATIONS FOR SUCH TRANSPORT AND TO URGE AND ENCOURAGE THE EXPLORATION OF ALTERNATIVE MEANS FOR THE TRANSPORTATION AND DISTRIBUTION OF CRUDE OIL

WHEREAS, crude oil is increasingly being transported by railroads from production fields in the west (particularly from the Bakken shale oil formation of North Dakota and heavy tar sands oil fields of Alberta, Canada) to ports including Albany, New York for transfer to barges and ships to be transported on the Hudson River to East Coast refineries; and

WHEREAS, crude oil from the Bakken shale deposits has proven to be more explosive and more corrosive than typical crude oils, and heavy, sinking oils from tar sands formations to be much more viscous than typical crude oils, making the protection of public safety and environmental health from these particular types of oils, as well as spill response and remediation, extremely difficult and dangerous; and

WHEREAS, the nationwide volume of crude oil transported by rail has increased to more than 400,000 carloads in 2013 compared to 9,500 carloads in 2008, a more than 40-fold increase; as much as 20% of the highly volatile crude oil extracted from the Bakken formation is transported through New York State communities and ecosystems; and

WHEREAS, roughly two to three crude oil unit trains, each carrying approximately 3 million gallons of crude oil, travel everyday through Orange County, including the City of Newburgh, and the Towns of Newburgh, New Windsor and Cornwall, and near critical public infrastructure including hospitals, municipal buildings, public schools, colleges, waste water treatment facilities, as well as homes and private businesses; and

WHEREAS, Bakken crude oil is commonly transported in class DOT-111 rail tank cars; which are designed for general purpose liquid transport, not for hazardous cargos; which railcars lack even the most basic safety measures (shields, pressure vents, and double hulls), and despite repeated recommendations from the NTSB over the past 30 years (most recently in March 2012 and January 2014) that these rail cars not be used for crude oil transport; and

WHEREAS, PHMSA and FRA issued a joint safety advisory on May 7, 2014 advising railroad companies to avoid using DOT-111 railcars to ship Bakken crude oil whenever reasonably practicable; and

WHEREAS, DOT-111 railcars are unacceptably dangerous, as demonstrated by the statistically high number of accidents and spills involving their use, particularly in light of the woeful state of railroad enforcement, inspection, oversight, and safety, highlighted by the testimony of the Chair of the Surface Transportation Board in April, 2014, that “no community is prepared for a worst-case scenario” for crude oil-by-rail disasters; and

WHEREAS, the volume of oil carried in a DOT-111 railcar is just small enough to avoid triggering the development of a “comprehensive” response plan, meaning that no collaboration is required between the railroads and the towns through which these rail cars pass (along the Hudson or through the rest of the nation), and that no official government certification is required to assure that there is adequate emergency response capacity; and

WHEREAS, there have been a series of crude oil train derailments in the United States and Canada that have led to loss of life, loss of property, and significant economic and environmental damage, including the loss of 47 lives in Lac-Mégantic, Quebec, in July 2013; and

WHEREAS, on April 30, 2014, 17 tanker cars derailed in Lynchburg, Virginia, including three that rolled into the James River and one that spilled about 30,000 gallons of crude oil into the river, requiring the shutdown of a downstream public water supply; and

WHEREAS, there have been at least five oil train derailments in New York State since December 2013, including those in West Nyack, Town of Ulster, Selkirk, Albany and Cheektowaga; and

WHEREAS, CSX Corporation was fined \$10,000 for failing to timely report its two February 2014 oil train derailments in Ulster and Selkirk, New York; and

WHEREAS, a train carrying crude oil blocked access to about 60 homes in the Town of Saugerties on March 31, 2014, for approximately 90 minutes without notifying local emergency responders; and

WHEREAS, on June 29, 2014, 100 gallons of oil spilled from a rail car at the Global Partners, LLC terminal facility in the Port of Albany, a spill that was not reported to local officials; and

WHEREAS, joint state-federal “inspection blitzes” have identified dozens of train and rail car safety defects requiring corrective action in rail yards in Albany and Buffalo, highlighting the risks facing our communities and environment, but no such inspections have been performed on tracks in Orange County; and

WHEREAS, on January 28, 2014, New York State Governor Andrew Cuomo signed an Executive Order recognizing that crude oil transportation by rail car and river vessels presents an ongoing major risk to New York communities and the environment, shortly after two safety recommendations by the National Transportation Safety Board reached the same conclusion and called for major system-wide reforms; and

WHEREAS, on May 7, 2014, the United States Department of Transportation Secretary Anthony Foxx issued an Emergency Order requiring rail carriers to provide State Emergency Response Commissions with advance notice; it is imperative that emergency managers and first responders are given up-to-date information on what materials are being transported through their regions, when these transports are occurring, and where this crude oil will be stored; and

WHEREAS, the NYS Department of Environmental Conservation has granted numerous permits to subsidiaries of Global Partners LP (Global) and Buckeye Partners LP (Buckeye) which authorize the transfer of up to 2.8 billion gallons per year of crude oil from train to barge or ship in the Port of Albany, for transport down the Hudson River; and

WHEREAS, approximately one articulated barge per day carrying 4 million gallons and one tanker per week carrying 7 million gallons currently pass Orange County on the Hudson River; and

WHEREAS, the *Stena Primorsk*, the first tanker carrying crude oil on the Hudson River, ran aground and pierced its outer hull just six miles downstream of the Port of Albany in December 2012, though none of the 12 million gallons of oil it carried were spilled; and

WHEREAS, recent barge collisions resulting in petroleum spills in the Mississippi River and Galveston Bay have shown that even double-hulled vessels are not protective in all accidents; and

WHEREAS, Global has submitted pending applications to the New York State Department of Environmental Conservation (DEC) seeking approval to redevelop its oil terminals in New Windsor and Newburgh to handle between 1.3 billion and 1.8 million gallons of crude oil per year; the expanded facility could double the number of trains and marine vessels carrying crude oil that pass through Orange County; and

WHEREAS, Global has also submitted an application to the New York State Department of Environmental Conservation to modify its Title V Air Facility Permit to install boilers to heat heavy crude oil at its facility in the Port of Albany, which would give Global Partners and its affiliates the capability to ship heavy crude oils, such as tar sands bitumen from Alberta, Canada, through Orange County on the Hudson River; and

WHEREAS, there have been no spill response drills in Orange County waters focused on responding to a spill of heavy crude oil; and

WHEREAS, Orange County shorelines include private residences and businesses, public parks, and critical public infrastructure that would be at significant risk in the case of a crude oil spill; and

WHEREAS, tourism based on a clean environment is an important part of Orange County's economy; and

WHEREAS, the Global New Windsor site is located in the Hudson River Estuary and within 1.4 miles of three distinct Significant Coastal Fish and Wildlife Habitats: Hudson Highlands, Moodna Creek and Fishkill Creek; and

WHEREAS, the Global New Windsor site is located at the mouth of the Quassaick Creek, which is the focus of years of citizen and government efforts to study, manage and restore the health and biodiversity of this water resource; and

WHEREAS, the tidal nature of the Hudson River could cause oil from a spill to be quickly transported both up- and downriver, threatening the drinking water supplies of those communities who derive their sure drinking water from the Hudson River, including Highland, Poughkeepsie and during times of drought the City of New York via the Delaware aqueduct tap at Chelsea; harming fish and wildlife;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh recognizes that the transport of crude oil, especially Bakken and heavy crudes, by rail and marine vessel through our communities presents an immediate, significant danger to the people, economy and environment of our region; and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh calls upon the United States Department of Transportation, the United State Environmental Protection Agency, the New York State Departments of Transportation ("DOT") and Environmental Conservation ("DEC") to: (i) immediately order a full environmental impact study of the potential impacts of increased crude oil transport by train, barge, or ship through Orange County, and, (ii) to enact stringent rules and regulations for the transportation of crude oil, and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh urges and encourages federal and state agencies to explore and develop alternative means for the distribution and transportation of crude oil; and

BE IT FURTHER RESOLVED, that the City Clerk of the City of Newburgh is hereby authorized to mail copies of this Resolution to United States Department of Transportation, the United State Environmental Protection Agency; U.S. Senator Charles E. Schumer, U.S. Senator Kirsten E. Gillibrand, U.S. Congressman Sean Patrick Maloney; Governor Andrew Cuomo, NYS DEC Commissioner Joe Martens, and State Senator William J. Larkin, Jr. (39th District) and Assemblyman Frank Skartados (104th District),

LOCAL LAW NO.: _____ - 2014

OF

A LOCAL LAW ADDING CHAPTER 276 OF THE CODE OF ORDINANCES
OF THE CITY OF NEWBURGH ENTITLED "TOBACCO" AND ENACTING ARTICLE I
ENTITLED "TOBACCO RETAIL LICENSE"

BE IT ENACTED, by the Council of the City of Newburgh, New York that Chapter 276
"Tobacco" be and is hereby added as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Adding Chapter 276 entitled 'Tobacco'
and Enacting Article I entitled 'Tobacco Retail License' to the Code of Ordinances of the City of
Newburgh".

SECTION 2 - PURPOSE AND INTENT

WHEREAS, tobacco use is the foremost preventable cause of premature death in the United States,
causing over 400,000 deaths in the United States each year; and

WHEREAS, tobacco companies sell products that are addictive and inherently dangerous, causing
cancer, heart disease, and other serious illnesses; and

WHEREAS, the City of Newburgh has a substantial interest in reducing the number of individuals
of all ages who use cigarettes and other tobacco products, and a particular interest in protecting
adolescents from tobacco dependence and the illnesses and premature death associated with tobacco
use; and

WHEREAS, an overwhelming majority of Americans who use tobacco products begin using such
products while they are adolescents and become addicted to those products before reaching the age
of 18; and

WHEREAS, the prevention of adolescent tobacco product use is detailed in Article 13-F of the New
York State Public Health Law, known as the Adolescent Tobacco Use Prevention Act (ATUPA)
which expressly prohibits the sale of tobacco products to minors; and

WHEREAS, although it is unlawful to sell tobacco products to minors, New York State Department of Health, The New York Youth Tobacco Survey 2008 finds that 8.4% middle school and 28% of high school students in the Hudson Valley Area report that they usually purchase their cigarettes from a retail store; and

WHEREAS, research has found that higher tobacco retail outlet density is significantly associated with higher rates of youth smoking initiation and experimentation; and

WHEREAS, The New York State Tobacco Control Evaluation Program Tobacco Retail Outlet Density by Proximity to Schools and in Low Income Areas Orange County, New York Findings, a report by the Department of Health Behavior, Division of Cancer Prevention and Population Sciences, at Roswell Park Cancer Institute found that in 2012 of the 319 validated tobacco retail outlets located in Orange Council, 110 or 34.5% are located in the Newburgh area and in Orange County, 16.3% (n=52 of 319) are located within a distance of 1,000 feet of a school; and

WHEREAS, research shows that a high concentration of tobacco outlets near schools provides our most vulnerable populations with ready access to tobacco and increases their exposure to tobacco retail marketing, which may increase their uptake of tobacco usage and creates an environment that promotes the social acceptability of tobacco use; and

WHEREAS, City of Newburgh has a substantial and important interest in reducing the illegal sale of tobacco products to minors; and

WHEREAS, studies have found a higher prevalence of current smoking at schools with more tobacco outlets within walking distance, and researchers suggest that limiting the proximity of tobacco outlets to schools may be an effective strategy to reduce youth smoking rates; and

WHEREAS, licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors; and

WHEREAS, restricting the number and the location of tobacco retailers and the associated marketing of tobacco products within those retail stores in the City is necessary to protect the public health, safety, and welfare of our youth; and

WHEREAS, a local licensing system for tobacco retailers is necessary and appropriate to protect the public health, safety, and welfare of our residents, particularly children, and will help ensure that retailers comply with the ATUPA, other tobacco control laws, and the business standards of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED THAT, it is the intent of the City of Newburgh to implement effective measures through this Chapter to reduce the number of its tobacco retail outlets, regulate the location of its tobacco retail outlets, stop the sale of tobacco products to its youth, prevent the sale or distribution of contraband tobacco products in Newburgh, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Chapter 276 entitled "Tobacco", Article I entitled "Tobacco License" to read as follows:

ARTICLE I.

§ 276-1 Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

ADMINISTRATIVE HEARING means a hearing by the City Manager or his designee.

ADULT-ONLY ESTABLISHMENT means a facility where the operator ensures or has a reasonable basis to believe (such as checking identification of any person appearing to be under the age of 26) that no person under the Legal Age is permitted entrance.

AGE-VERIFIED CUSTOMER means any individual who has presented a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is of Legal Age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided however that such appearance shall constitute a defense in any proceeding alleging a violation of this Chapter. It shall be an affirmative defense to a violation of this Chapter that the Tobacco Retailer successfully performed a Transaction Scan of an individual's identification as defined by New York Public Health Law Section 1399-cc and that a Tobacco Product or Tobacco-Related Product was provided to such individual in reasonable reliance upon such identification and transaction scan.

APPLICANT means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

CITY CLERK means the City Clerk or Deputy City Clerk.

LEGAL AGE means the minimum age at which individuals are permitted to legally purchase tobacco products or tobacco-related products.

NEW TOBACCO RETAIL LICENSE means any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

POLICE DEPARTMENT means the City of Newburgh Police Department.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous year.

SCHOOL means a public or private kindergarten, elementary, middle, junior high or high school or alternative school.

TOBACCO PRODUCT or TOBACCO-RELATED PRODUCT means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, shisha, powdered and/or dissolvable tobacco products, liquid nicotine and electronic cigarette cartridges, whether packaged or not; any packaging that indicates it might contain any substance containing tobacco or nicotine; or any object utilized for the purpose of smoking or inhaling tobacco or nicotine products. However, "Tobacco Product" or "Tobacco-Related Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

TOBACCO RETAILER means any Person who sells or offers for sale any Tobacco Product or Tobacco-Related Product or any employee of such a Person.

TOBACCO RETAIL LICENSE means a license issued by the Department to a Person to engage in the retail sale of Tobacco Products or Tobacco-Related Products in the City of Newburgh.

§ 276-2 Tobacco Retail License

A. Starting January 1, 2015, no Person shall sell, offer for sale, or permit the sale of Tobacco Products or Tobacco-Related Products to consumers in the City of Newburgh, without a valid Tobacco Retail License issued by the City Clerk. A Tobacco Retail License is not required for a wholesale dealer who sells Tobacco Products or Tobacco-Related Products to retail dealers for the purpose of resale only and does not sell any Tobacco Products or Tobacco-Related Products directly to consumers.

B. All Tobacco Retail Licenses issued pursuant to this section are nontransferable and non-assignable and are valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each address at which Tobacco and Tobacco-Related Products are sold or offered for sale. Any change in business ownership or business address requires a new Tobacco Retail License.

C. All Tobacco Retail Licenses issued pursuant to this section are valid for no more than one year and expire on January 1 following the effective date of the Tobacco Retail License. As set forth in Section 276-8, a Tobacco Retail License may be revoked by the Police Department prior to its expiration date for cause.

D. Applications for a New Tobacco Retail License shall be made on a form specified by the City Clerk, at least 30 days prior to January 1, 2015. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

E. Applications for a Renewed Tobacco Retail License shall be made on a form specified by the City Clerk at least 30 days prior to the expiration of the current license. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

F. Applications for a new or renewed Tobacco Retail License shall be accompanied by the fee set forth in Section 276-7.

G. The issuance of any Tobacco Retail License pursuant to this Chapter is done in the discretion of the City of Newburgh and shall not confer upon licensee any property rights in the continued possession of such a license.

§ 276-3 Issuance of Licenses

A. Upon the receipt of a completed application for a New or Renewed Tobacco Retail License and the fee required by Section 276-7, the Police Department shall inspect the location at which tobacco sales are to be permitted. The Police Department also may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

B. No Tobacco Retail License shall be issued by the City Clerk to an Applicant if one or more of the following bases for denial exists:

- (1) The information presented in the application is incomplete, inaccurate, false, or misleading;
- (2) The fee for the application has not been paid as required;
- (3) The Applicant does not possess a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance at the location for which an application is requested;
- (4) The Applicant seeks a New Tobacco Retail License at a location for which this Chapter prohibits the issuance of a New Tobacco Retail License;
- (5) The total number of applications exceeds the number permitted under Section 276-4(A) of this Chapter.
- (6) The Applicant has previously had a Tobacco Retail License issued under this Chapter revoked;

- (7) A Tobacco Retail License issued under this Chapter for the same address or location previously has been revoked;
- (8) The Applicant has been found by a court of law or administrative body to have violated any federal, state or local laws pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs; (b) the payment or collection of taxes on Tobacco Products; (c) the display of Tobacco Products or of health warnings pertaining to Tobacco Products; or (d) the sale of Tobacco Products;
- (9) The Applicant is not in compliance with all applicable New York State Uniform Building Code, Fire Prevention Code, Property Maintenance Code, Electrical Code and Plumbing Code and the Code of Ordinances of the City of Newburgh; and
- (10) The Applicant has not paid to the City of Newburgh outstanding fees, fines, penalties, or other charges owed to the City of Newburgh.

§ 276-4 Limitation on Number of Licenses Issued

A. In the first year subsequent to the effective date of this Chapter, a no more than 90 New Tobacco Retail Licenses shall be issued and only to an Applicant for the same location at which the Applicant possessed a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance 180 days prior to the effective date of this Chapter.

B. Except for the first year subsequent to the effective date of this Chapter, the total number of New and Renewed Tobacco Retail Licenses issued by the City Clerk in a given year shall not exceed the number of Tobacco Retail Licenses that were issued in the previous year.

C. Starting on January 1, 2016, the City Clerk shall issue only one New Tobacco Retail License for every two Tobacco Retail Licenses that were revoked during the previous year or for which no renewal application was submitted.

D. In the first year subsequent to the effective date of this Chapter, if the number of valid applications for a New Tobacco Retail License exceeds the number of New Tobacco Retail Licenses that may be issued under Section 276-4(A), licenses shall be granted using the following priorities:

- (1) Tobacco Retail Licenses shall be granted, first, to any Applicant who will sell Tobacco Products or Tobacco-Related Products at an Adult-Only Facility.
- (2) Tobacco Retail Licenses shall be granted, second, to Applicants for establishments in an eligible location. If there are more eligible Applicants for new licenses than the number of available new licenses, the licenses shall be granted to those Applicants by lottery as long as the issuance of a new license does not violate the location requirement set forth in Section 276-5(C).

- a. A second lottery may be held for Applicants who were successful in the first lottery but whose award would not meet the location requirement set forth in Section 276-5(C).

- (3) New Tobacco Retail Licenses shall be granted, third, to those Applicants who were not awarded a license in the first or second lotteries for establishments that comply with the location requirement set forth in Section 276-5(C).

E. Starting on January 1, 2016, whenever the number of valid applications for New Tobacco Retail Licenses exceeds the maximum number of such new licenses that may be issued pursuant to this section, the City Clerk shall grant such licenses using the following priorities:

- (1) Tobacco Retail Licenses shall be granted, third, to any person who will sell Tobacco Products at an Adult-Only Facility. If there are more valid applications from such sellers for new licenses than the number of available new licenses, the licenses shall be granted to those Applicants by lottery; and

- (2) Tobacco Retail Licenses shall be granted, first, to any Applicant that was not granted a license in the first year after the effective date of this Chapter because of an ineligible location, for an establishment at different eligible location. If there are more valid applications from such sellers for new licenses than the number of available new licenses, the licenses shall be granted to those Applicants by lottery;

- (3) Tobacco Retail Licenses shall be granted, second, to any Applicant that was not granted a license in the first year after the effective date of the Chapter in the location lottery set forth in Section 276-D(2) where the Applicant becomes re-eligible under Section 276-5(C).

- (4) Any remaining available New Tobacco Retail Licenses shall be granted to Applicants by lottery.

§ 276-5 **Certain Locations**

A. No Tobacco Retail License shall be issued to any seller of tobacco products or tobacco-related products that is not in a fixed, permanent location.

B. No New Tobacco Retail License shall be issued to any establishment within 1,000 feet of the nearest point of the property line of a School.

C. No New Tobacco Retail License shall be issued to any establishment within 1,000 feet of any other establishment to which an Applicant has been issued a valid New or Renewed Tobacco Retail License.

§ 276-6 Required License Display

A. Any Tobacco Retail License issued pursuant to this Local Law shall be displayed prominently at the location where the Tobacco Products or Tobacco-Related Products are sold so that it is readily visible to customers.

B. Selling, offering for sale, or permitting the sale of any Tobacco Product or Tobacco-Related Product without a valid Tobacco Retail License displayed in accordance with Section 276-6(A) constitutes a violation of this Local Law.

§ 276-7 Required Fee

A. Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee as set forth in Chapter 163 "Fees" of the Code of Ordinances of the City of Newburgh.

B. Starting two years after the effective date of this Chapter, the City Council may, on an annual basis, modify the fee required pursuant to Section 276-7(A). The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

§ 276-8 Revocation or Suspension of Licenses

Any Person who is found to be in violation of the terms and conditions of this Local Law or for violation of any federal, state, or local law or regulation pertaining to (a) the display of Tobacco Products or Tobacco-Related Products or of health warnings pertaining to Tobacco Products or Tobacco-Related Products, or (b) the sale of Tobacco Products or Tobacco-Related Products shall have their City of Newburgh License suspended for up to 3 months for a first offense, 6 months for a second offense, or revoked for a third offense, after notice and an opportunity to be heard at an administrative hearing before the City Manager or his designee.

§ 276-9 Violations and Enforcement

A. The Police Department shall enforce the provisions of this Chapter. The Police Department may conduct periodic inspections in order to ensure compliance with this Chapter.

B. In addition to the penalties provided for in Section 276-8, any Person found to be in violation of this Chapter shall be guilty, upon conviction, of an offense punishable by a fine of not less than \$500.00 for the first violation; not more than \$1,000 for a second violation; and not more than \$2,000.00 for the third and each subsequent violation within a two-year period or by imprisonment for a period not exceeding 1 year, or by both such fine and imprisonment. Each day on which a violation occurs shall be considered a separate and distinct violation.

§ 276-10

Severability

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 - EFFECTIVE DATE

This Local Law and shall be effective on January 1, 2015 and upon the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

DRAFT

ORDINANCE NO.: _____ - 2014

OF

_____, 2014

AN ORDINANCE AMENDING CHAPTER 163
ENTITLED "FEES" OF THE CODE
OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

§ 276-7	<u>Tobacco Retail License Application Fee</u>	<u>\$50.00 Non-refundable</u>
§ 276-7	<u>Tobacco Retail License Annual Fee</u>	<u>\$200.00</u>
	<u>Tobacco Retail License Replacement Fee</u>	<u>\$100.00</u>

Section 2. This ordinance shall take effect upon the filing of Local Law No. -2014 of _____, 2014 in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

Underlining denotes additions.
~~Strikethrough~~ denotes deletions.

Re: Request for Resolution Condemning the Persecution of Falun Gong

August 18, 2014

Dear Ms. Judy Kennedy,

This past July 20th marked the 15th anniversary of the Chinese communist party's persecution of Falun Gong, a spiritual meditation practice. Accordingly our local Falun Gong practitioners respectfully request the drafting of a resolution or proclamation from our municipal government, calling for an end to the persecution.

Falun Gong, also called Falun Dafa, is a self-cultivation practice based on the principles of Truthfulness, Compassion, and Tolerance. Today, over 100 million people of all ages and walks of life in more than 110 countries around the world practice and cherish this meditation practice. Yet, for 15 long years, tens of thousands have been killed by the communist regime in China simply for practicing Falun Gong.

Besides torture and brainwashing, mounting evidence indicates that Falun Gong practitioners are subjected to state-sanctioned organ harvesting. According to human rights experts, tens of thousands of jailed practitioners have been systematically examined and blood-tested in order to build a living-organ donor bank. They are then killed on demand to fuel China's lucrative transplant industry. These crimes, are still going on in China today, and are cited in the annual Report to Congress on International Religious Freedom for 2013, and in the H.Res. 281, currently co-sponsored by 198 US congress members.

"We cannot ignore the fact that in the 21st Century, human beings can be relegated to the status of raw materials for organ harvesting and organ transplantations. This is absolutely incredible after the Second World War, after the Nazis. We cannot tolerate such practices," said Leonidas Donskis, a EU parliament member.

When matters like this are brought to light, our actions are what counts. Your added voice will inspire Mainland Chinese Falun Gong practitioners who persist in their belief, despite the situation they face. Your actions will send a clear and powerful message to the world that, the people of the United States of America do indeed uphold the principles of kindness and justice, and that they cannot tolerate such "A new form of evil in this planet". (As described by David Matas, respectful human rights lawyer, the co-author of *The books Bloody Harvest: Organ Harvesting of Falun Gong Practitioners in China.*)

Your honorable action to stop this crime against humanity is most appreciated.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' shape followed by a horizontal line extending to the right.

Edward L'Estrange

**Address: 6 Geoffrey Ct., Otisville, NY 10963
Phone: 646-831-3771 Email: tedetc@fastmail.fm**

MOTION CALLING FOR ACTION TO HELP STOP THE PERSECUTION OF FALUN GONG IN CHINA

WHEREAS, Falun Dafa, also known as Falun Gong, is a peaceful spiritual practice based on the principles of Truthfulness, Compassion, and Forbearance for achieving physical and spiritual well-being through meditation exercises; and

WHEREAS, Falun Gong has attracted millions of people of all ages and backgrounds in over 114 countries and regions; and

WHEREAS, since July 1999, China's former president launched the "eradication" campaign against Falun Gong with the policy of 'Defame Falun Dafa's reputation, destroy practitioners physically, bankrupt them financially'; and

WHEREAS, for 15 long years, Falun Gong practitioners have been systematically detaining and torturing for their beliefs by the Chinese communist regime, as documented by the United States Department of State, the U.S. Commission in International Religious Freedom, the European Parliament, Amnesty International, Human Right Watch, and many other governmental and third-party organizations; and

WHEREAS, "Bloody harvest: Revised report into allegations of organ harvesting of Falun Gong practitioners in China", an independent investigation conducted by former Canadian Secretary of State for Asia-Pacific David Kilgour and the respected human rights lawyer David Matas, concluded that "there has been and continues today to be large scale organ seizures from unwilling Falun Gong practitioners"; and

WHEREAS, European Parliament passed the resolution 2013/2981(RSP), and currently 201 US congress members co-sponsor H.Res. 281, expressing their concern over persistent and credible reports of systematic, state-sanctioned organ harvesting from large numbers of Falun Gong practitioners imprisoned for their beliefs; and

WHEREAS, hundreds of residents in Orange County have signed a petition to urge the U.S. government to take all reasonable steps to bring an end to such a "new form of evil in this planet"; and

WHEREAS, it is also our responsibility as human beings to raise awareness necessary to stop horrific crimes against our fellow human beings no matter what the cost.

NOW THEREFORE BE IT RESOLVED that the Board of xxx call on the Government of the United States to condemn the persecution against Falun Gong and the crime of harvesting organs from Falun Gong practitioners and other involuntary donors in China.

Introduced on the 25th day of August, 2014 by: